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IN CHANCERY—BREVIA TE.

JOHN PENN. THOMAS PENN.
and RICHARD PENN. Esqrs: Plaintiffs.

CHARLES CALVERT, Esq.: LORD BALTIMORE in the
Kingdom of Ireland. Defendant.

FOR THE PLAINTIFFS.

UPON A BILL TO COMPELL A SPECIFICK EXECUTION OF ARTICLES OF AGREEMENT ENTERED INTO BETWEEN THE PARTYS FOR SETTLING THE BOUNDARYS OF THE PROVINCE OF PENSILVANIA, THE THREE LOWER COUNTYS, AND THE PROVINCE OF MARYLAND, AND FOR PERPETUATING TESTIMONY, &c.

MR. ATTORNEY GENERAL SIR DUDLEY RYDER.
MR. SOLLICITOR GENERAL MURRAY.
MR. KING'S COUNCIL NOELL.

PARIS AND WESTON, *Sollicitors*.



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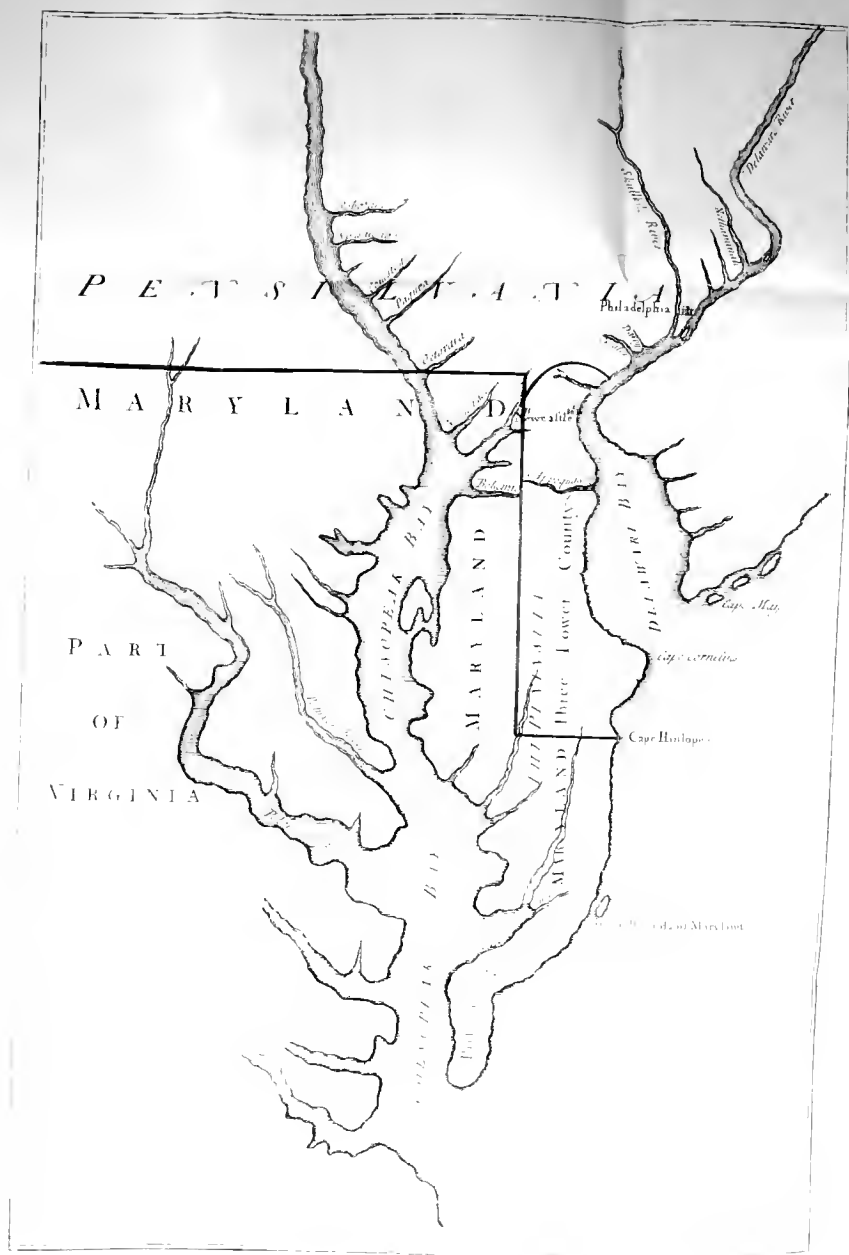
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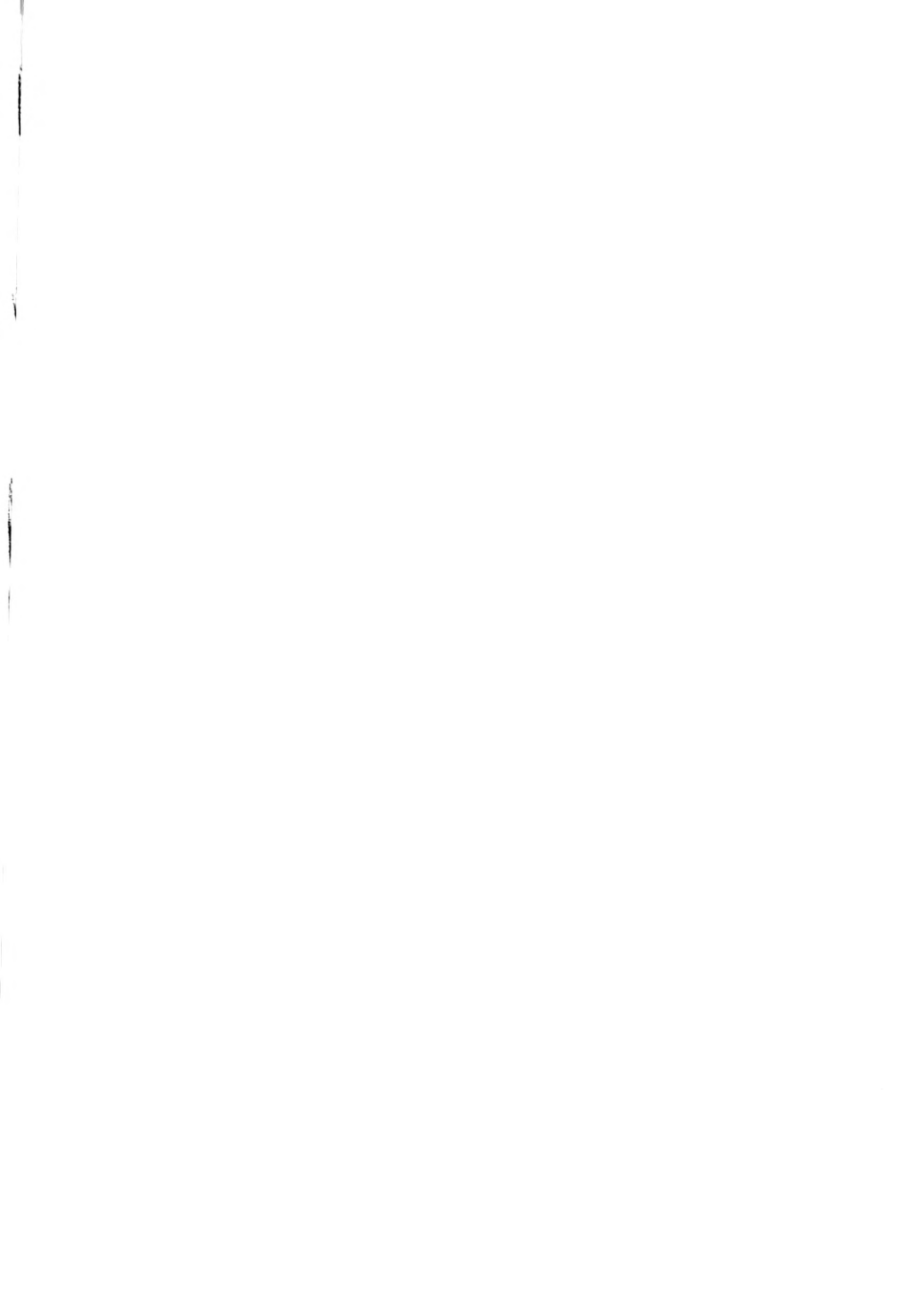
















THE BRIEF.

IN CHANCERY. John Penn, Thomas Penn, and Richard Penn, Esqrs; the three Surviving Sons of William Penn Esq; deceased, who in his Life-time was Proprietary of the Province of Pennsylvania, and of the three Lower Counties called Newcastle, Kent, and Sussex, on Delaware, adjoining to the said Province of Pennsylvania in America, Plaintiffs.
Charles Calvert Esq; Lord Baltimore in the Kingdom of Ireland, Defendant.

FOR THE PLAINTIFFS.

Bill filed 21 June, 1735. amended 18 December, 1736.

That in America, there is a certain Peninsula, or Tract, shooting out from the main Continent Southwards, into the Atlantick Sea or Ocean, which Peninsula, or Tract, is bounded, on the West side, by the Great Bay of Chesopeak, and, on the East side, is bounded, on the lowermost, or most Southerly part thereof, by the Atlantick Sea or Ocean, and, more Northwards, the same Peninsula, or Tract, is bounded, on the East, by the Estuary of Delaware, and as the same Peninsula or Tract runs further Northwards, towards the main Continent, it is bounded, on the East, by the Great River of Delaware, which river of Delaware runs between the same Peninsula or Tract, lying on the West side thereof, and the Territory now called West New Jersey, but heretofore called successively New Belgia, New Netherlands, and New England, lying on the East part thereof.

That the same Peninsula, or Tract, and the Parts nearly contiguous thereto, was first discovered by Captain John Smith, an Englishman, in or about the Year of our Lord 1606; who went on Shore, in some parts thereof, and gave or affixed Names to several Parts of the said Peninsula, or Tract and also, to several Places on that part of the main Continent which lay over against the same Peninsula, on the Western side of the said Bay of Chesopeak; and the said Captain Smith, after his Return from that Voyage, caused to be printed and published a Book, giving an Account of his Voyages and Discoveries, which said Book was printed in or about the Year of Our Lord 1624; and to such Book he annexed a Map, or plan, of the said

*A Map
of parts of the Provinces
of Pennsylvania and Maryland
with the Counties of
Newcastle, Kent and Sussex
on Delaware
according to the most exact Surveys yet made
drawn in the Year 1740*

PENN

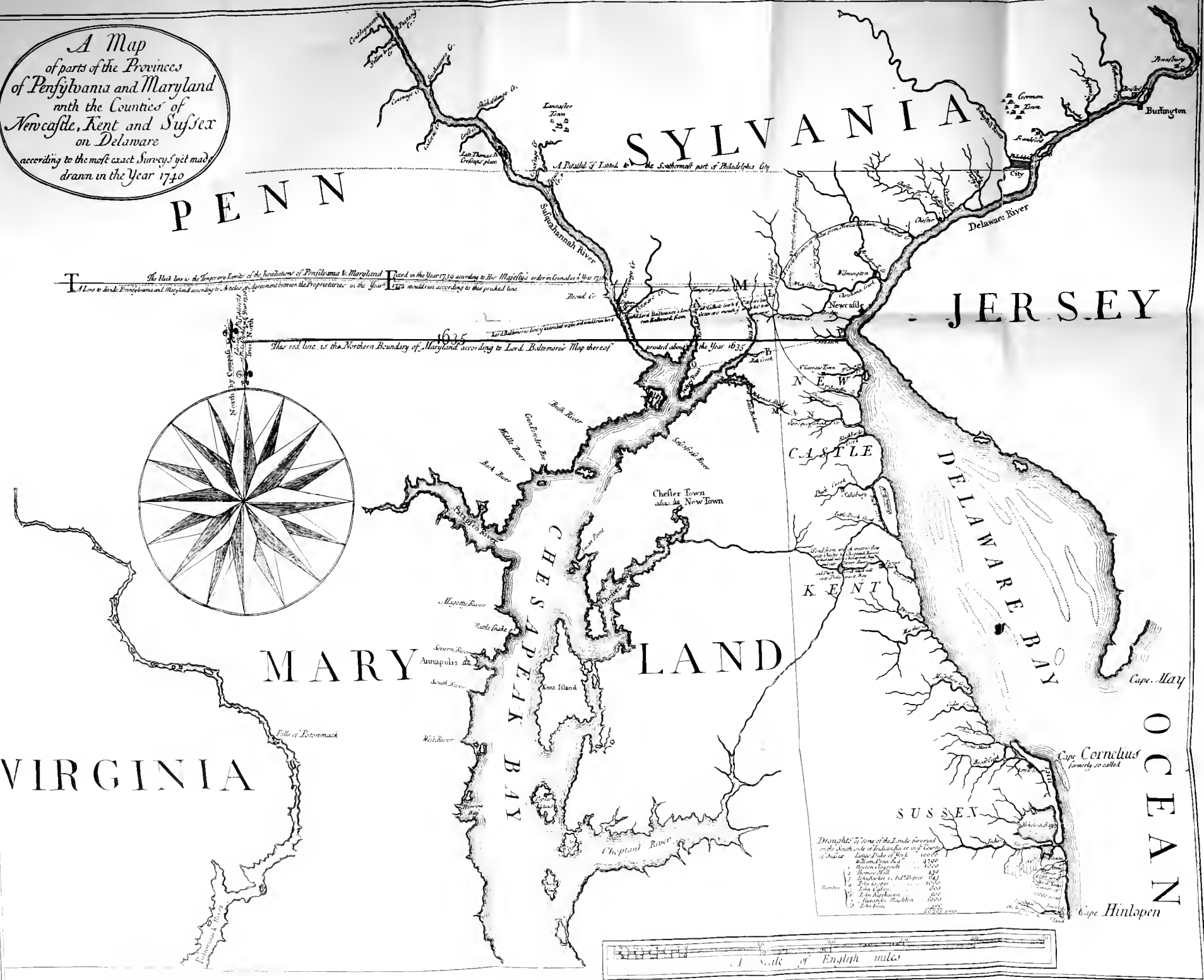
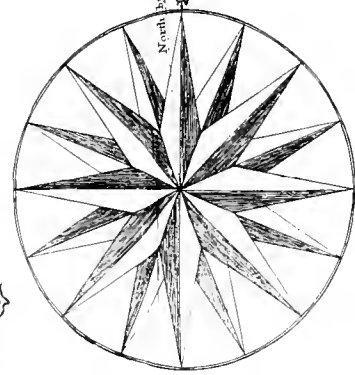
SYLVANIA

JERSEY

MARYLAND

VIRGINIA

OCEAN



Philadelphia 20th Oct 1740
 Before John Penn, Thomas Penn & Richard Penn Esq^{rs} Com^{rs} & Charles Calvert Esq^r Lord Baltimore in the Kingdom of Ireland Deput^y
 This Map was shewn to Jacob Henning, Thomas Milne, Thomas Moxon & Benjamin Eslinghouse on their examination as Witnesses on the part of the Complainants at the execution of a Commission for examining
 Witnesses in this Cause in Pennsylvania &c. Witnesses our hands
 Long 1740
 Clerk of the Peace
 John King

Peninsula and several adjacent Parts of what was then called by the general Name of Virginia; which Book is intituled, *The General History of Virginia, New England, and the Summer Isles, with the Names of the Adventurers, Planters and Governors, from their first beginning anno 1584. to this present 1624, with the Proceedings of those several Colonies and the Accidents that befell them in all their journies and Discoveries; also the Maps and Descriptions of all those Countries, their Commodities, People, Government, Customs and Religion yet known; divided into six Books, by Captain John Smith, sometimes Governor in those Countries, and Admiral of NewEngland.* London: Printed by J. D. and J. H. for Michael Sparks 1624. And the same Book is a well known Book amongst Historians, Geographers, and Mathematicians; and the said Book, and the Map of Virginia therein contained, are held in Estimation amongst learned Men, and are constantly reckoned and esteemed as the first, and earliest Account and Description and Map ever given of those Parts in and near to the said Peninsula by any Englishman whatsoever. And the said Map of Virginia contained the Degrees of Longitude and Latitude according to the best Observations and Discoveries then made.

That on the Eastern side of the said Peninsula, or Tract, and also above the said Peninsula or Tract, within the main Land or Continent, and towards the Sea and the Estuary and River of Delaware, there was, of very early and ancient times (the beginning whereof is not known) a Settlement and Plantation, made and planted, and inhabited by Christians of the Sweedish Nation, and the same Settlement and Plantation was, afterwards, held and inhabited in the year 1609, and for many years then after, by Christians under the dominion of the States General of the United Provinces.

And the said ancient Settlement of the Swedes, and afterwards of the Dutch, has, for a great many Years past, ever since the Year 1663, been in the Possession of the late James Duke of York, and of the Plaintiffs Father, and of the Plaintiffs, and is in the Possession of the Plaintiffs at this day.

And the same Settlement has been, sometimes, called the Settlement on Delaware, sometimes by the only Name of Delaware, sometimes by the Name of the Province of Delaware, sometimes by the Name of the three lower Counties, sometimes by the Name of the three lower Counties of Newcastle, Kent, and Sussex, and sometimes by the Name of the Territories belonging to Pensilvania, all which names did and do signify and mean the self-same Settlement and Plantation, heretofore seated and inhabited by the Swedes and Dutch as aforesaid.

That, several Years after such Discovery was made as afore-

said by the said Captain John Smith, and some few Years after the said Captain Smith's said History and Map of Virginia had been printed and published in the Year 1624 as aforesaid, and at a time when, as the Plaintiffs expressly Charge, there was No other Map or Plan of the same Peninsula or Tract and the Parts adjacent thereto, done by any Englishman whatever, extant, Nor any other History or Description of the same Peninsula or Tract, and Parts adjacent, published, printed, known or used, than the said Captain Smith's said Book or History and Map only; Cecilius, then Baron of Baltimore, in the Kingdom of Ireland, did, in or about the Year of our Lord 1632, petition his late Majesty K. Charles the First, praying Leave to transport a Colony of the English Nation unto a certain Country in the Parts of America, which he by his said Petition expressly and positively suggested was not then cultivated and planted, tho' in certain Parts thereof inhabited by certain barbarous People having no Knowledge of Almighty God; and besought his said Majesty to give and grant All such the said Country, with certain Privileges and Jurisdictions for the Government thereof, to him and his Heirs for ever.

And, thereupon, his said late Majesty King Charles the First, by his Letters Patent, under the Great Seal of England, bearing Date at Westminster, on or about the 20th Day of June, which was in the 8th Year of his said late Majesty's Reign, and in the Year of our Lord 1632, expressly reciting the said petition and Prayer of the said Cecilius, for a grant of such a Country as herein before is described in the said Petition of the said Cecilius, did give and grant, unto the said Cecilius, in Fee, two several Tracts of Land, namely, one Tract which was part of the before-mentioned Peninsula, and one other Tract which was part of the Main Land, lying Westward of such Part of the said peninsula, and on the West-side of the said Bay of Chesopeak; and the said Tracts of Land, so granted to the said Cecilius, were in and by the said Letters Patent severally and respectively described, butted and bounded as herein after mentioned, that is to say, The first of the said Tracts was described, and was granted to the said Cecilius, as all that part of a Peninsula, lying in the Parts of America, between the Ocean on the East, and the Bay of Chesopeak on the West, and divided from the other Part thereof by a right Line, drawn from the Promontary or Head of Land called Watkin's Point, situate in the aforesaid Bay, near the River of Wigheo, on the West, unto the Main Ocean on the East; And, Between that Bound on the South, as far Northward as that part of the Estuary of Delaware, which lies under the 40th Degree of Northern Latitude from the Equinoctial, where New-England ends; And the sec-

end of the said Tracts was described, and was granted to the said Cecilius, as all that Tract of Land, within the Bounds aforesaid; namely, passing from the aforesaid Estuary called Delaware Bay, in a right Line by the Degree aforesaid, as far as to the true Meridian of the first Fountain of the River Potowomack, and from thence trending or passing towards the South to the farther Bank of the said River, and following the West and South side thereof, unto a certain Place called Cinquack, situate near the Mouth of the said River, where it falls into the aforesaid Bay of Chesopeak, and from thence, by the shortest Line, unto the aforesaid Promontory or Place called Watkin's Point; (so that all that Tract of Land, divided by the Line aforesaid drawn between the Main Ocean and Watkin's Point, unto the Promontory called Cape Charles, and all its Appurtenances, should remain entirely excepted to his said Majesty, his Heirs and Successors, for ever.)

And, in and by the same Letters Patent, his said late Majesty did also Grant unto the said Cecilius, in Fee, all Islands and Islets, within the Limits aforesaid, and all and singular the Islands and Islets which were, or should be in the Ocean, within 10 Leagues from the Eastern Shore of the said Country towards the East; and his said Majesty did erect the said Lands, so granted, into a Province, by the Name of Maryland, as by the same recited Letters Patent, had the Plaintiffs the same to produce, relation being thereunto had, would more plainly appear.

That the said Letters Patent, or Grant, so made to the said Cecilius as aforesaid, was so described, and the Tracts, which were thereby granted, were so bounded, by the help of the said Captain Smith's said Book and History or Map of Virginia, and no other; and so all skilful Persons do own, acknowledge and believe; and which manifestly appears for that the same Map has all and every the Names of the several Places which are contained and mentioned in the said Letters Patent; and No other Map or Maps whatsoever (English, or Foreign) which was extant in the said Year 1632, and at the time of granting the said Letters Patent (save only the said Smith's said Map of Virginia) hath, or have, the Names and Descriptions of the several Places mentioned in the said Letters Patent, agreeable to those which are mentioned and used in the said recited Letters Patent.

That, according to the express Bounds of the said recited Letters Patent, the Head, or most Northern part, of all the Lands, thereby granted to the said Cecilius, was to extend only so far as until it subjoined to such part of the Estuary of Delaware as lay under the 40th Degree of Northern Latitude; thereby excluding every part of the Lands which did lie under the said 40th Degree, namely, such Land as did lie from the 39th Degree com-

pleat, to the 40th Degree compleat; all which Space, from the 39th Degree compleat, to the 40th Degree compleat, the Plaintiffs do expressly charge, was and is at least 60 Geometrical Miles or Minutes, or 69 English Statute Miles, and did fully, clearly and plainly lie under the 40th Degree; and no part of what did lie under the 40th Degree was granted to the said Cecilius, but only as far as unto such part as did lie under the said 40th Degree.

That it appears, by all and every the Land-Marks, Abuttals and other Descriptions contained in the said recited Letters Patent, that no part of the Lands which lay under the 40th Degree was, or could possibly be, intended to be granted to the said Cecilius, for that, the same Lands, so granted to him, were to extend no farther Northwards than to such part of the Estuary of Delaware as lay under the 40th Degree; whereas no part of the Estuary of Delaware, or at most a very small part (of 1 or 2 Miles, at the utmost) did lie within, or under, the said 40th Degree of Northern Latitude.

That the part of the said Peninsula, so granted to the said Cecilius, is expressly mentioned to be bounded, on the East part, by the Main Ocean, which agrees exactly with the other Descriptions in the said recited Letters Patent, and makes the 39th Degree compleat to be the utmost Head or Northern Bound of the said part of a Peninsula, so granted to the said Cecilius; in regard that the Main Ocean does, so far, (and so far only) bound the said Peninsula, on the East part; and had his said late Majesty intended to grant Lands any higher, or further Northward, the Main Ocean alone was not a proper Description, or Abuttal, or Boundary, of such Lands higher than the 39th Degree compleat; and which is yet further strengthened and confirmed, by the other Descriptions contained in the said recited Letters Patent; in regard that the part of a Peninsula therein granted is to extend Northwards so far only as to that part of the Estuary of Delaware, on the North, as lay under the 40th Degree of Northern Latitude from the Equinoctial, where New England ended; and the Plaintiffs expressly Charge that the great Tract of Land which, at the time of making the said recited Letters Patent, was generally called by the English, New England (and which is now divided into the several Provinces or Colonies of West New Jersey, East New Jersey, New York, Rhode Island, Providence Plantations, Connecticut, Massachusetts Bay, New Hampshire, and Province of Main) did and doth lie and extend Eastwards of the said Peninsula before mentioned, and Eastwards of the said River of Delaware; and the Point of the same great Tract of Land, so called by the English, New England, at the Place nearest unto the said Peninsula, did, according to the Knowledge, Observation and Learning of the time when the said

Letters Patent were granted, reach and extend, downwards or Southwards, quite to the Line of the 39th Degree compleat, or very nearly so, within 3 or 4 Miles thereof, at the utmost.

That the first general Description in the said recited Letters Patent of the said first Tract of Land in the said Peninsula so granted to the said Cecilius, is a Grant of a part of a Peninsula: whereas, had the Bounds and Limits of that Tract granted extended, or been meant to extend, to the 40th Degree compleat, no part of the said Peninsula did extend so far Northwards, as to the 40th Degree compleat, or that the Plaintiffs expressly Charge that the Line of the 40th Degree compleat, did and doth lie far above, or Northwards of every Part whatever of the said Peninsula, and above or Northwards of the Isthmus which finishes and concludes the said Peninsula, and within the Main Country and Continent it self.

That, at the time of making the before recited Letters Patent to the said Cecilius, one part of the said Peninsula, which lay on the Eastern side of the said Peninsula, towards the Sea and the Estuary of Delaware and the River of Delaware, and which said part lay (according to the knowledge of those times) more Northward than the said 39th Degree compleat, and also, part of the Continent, at the Head or North part of the said Peninsula, and Which is now called the three lower Counties of Newcastle, Kent, and Sussex, was seated and inhabited by the Swedes and Dutch: and his said late Majesty was not, at the time of the said recited Letters Patent to the said Cecilius, seized or possest thereof, so as to grant the same; neither did his said late Majesty intend to grant the same; nor did the said Cecilius petition, or ask, his said Majesty for the same, but only for a Country in the said Letters Patent afterwards described, which was not then cultivated and planted, though in certain Parts thereof Inhabited by certain Barbarous People, having no knowledge of Almighty God.

That, after the said Letters Patent and Grant were made to the said Cecilius as aforesaid; he, or some of his Descendants, entered upon, and took possession of, the same Premises, so granted, and has continued possest thereof.

And the said Swedes and Dutch, successively, possest and enjoyed, for many Years after the Date of the said Letters Patent to the said Cecilius, their said ancient Settlement on Delaware, above the 39th Degree compleat, and bounding Eastwards upon the Sea, and upon the Estuary of Delaware, and upon the River of Delaware.

But, inasmuch as the said Swedish and Dutch Settlement, did not extend, Westwards, quite across the whole width of the said Peninsula to the said Bay of Chesopeak, and his said late

Majesty King Charles the First, or his successor, not having made any Grant of the said Country on the back of, or more Northwards than, the Tracts granted to the said Cecilius as aforesaid, for near 50 Years after the Date of the said recited Letters Patent to the said Cecilius, unto any person or persons, who possessed and seated the same; and the Lands (exclusive of those which were possess by the Swedes and Dutch as aforesaid) which lay Northwards of the Tracts granted by his said late Majesty to the said Cecilius as aforesaid, being possess by the Indian Natives in those parts, the Plaintiffs expressly charge, that the said Cecilius, Baron of Baltimore, and his Heirs and Descendants did, in Deceit and Disherison of his Majesty, set down upon, and take possession of, some Lands, on the Western side of the said Peninsula, above, and more Northward than, the 39th Degree of Northern Latitude compleat, and also above, and more Northward than, the Bounds and Limits expressly contained in the said recited Letters Patent; and for which seating down, or Possession, the Plaintiffs do expressly Charge that the said Cecilius, or any of his Heirs, or Descendants, had not the least shadow or pretence of legal Title, until a Title thereto was first made to a Descendant of the said Cecilius, by the Plaintiffs in manner as herein after mentioned.

That the Dutch held the said Lands, now called the three Lower Counties (which lie on the Western-side of the River of Delaware) as appertaining and belonging to, and always going along with, a larger or greater Settlement, upon a very large Tract of Land, part of what is generally called New-England, and particularly, on those Parts now called West-New-Jersey, and East-New-Jersey and New-York, on the Eastern side of Delaware, and that it was very convenient, and almost necessary, to those who enjoyed the greater Settlement, to have likewise the Lands now called the three Lower Counties, in respect that, the said River Delaware runs up Northwards, into the Back or Heart of the Main Continent, and is navigable for a great many Scores of Miles from the Sea and is a dangerous and difficult Passage, more especially in the Winter when the Ice comes down the River; and that the Ports and Havens, in passing up the said River Delaware, as well for Conveniency, as for Safety in times of Danger, do all lie on the said Western-side of the said River Delaware, which River is the only Key and Passage up to the Inland Country thereabouts.

But in, or about the Year 1664, his late Majesty King Charles the Second, took from the said Dutch, the said great Settlement and Possession of the said Dutch, at New-York and New-Jersey on the Eastern-side of the said River of Delaware, together with the said Lands on the Western-side of the said River of Dela-

ware and all other Lands appertaining to the said great Settlement; and his said late Majesty King Charles the Second, being then (for the first time) seized in Right of his Crown, and possessor of the said several Settlements and ancient Possessions of the Swedes and Dutch, did, by his Letters Patent, under the Great Seal of England, bearing Date at Westminster on or about the 12th Day of March, in the 16th Year of his Reign, and in the Year of Our Lord 1664, for divers good Causes and Considerations thereunto moving, of his especial Grace, certain Knowledge and mere Motion, give and grant unto his dearest Brother James, then Duke of York, his Heirs and Assigns, all that part of the Main Land of New-England, beginning at a certain Place called or known by the Name of St. Croix, next adjoining to New-Scotland in America, and, from thence, extending, along the Sea Coast, unto a certain Place called Pemaquine or Pemaquind, and so, up the River thereof, to the furthest Head of the same, as it tendeth Northwards, and extending, from thence, to the River of Kinebequine, and to, upwards, by the shortest Course, to the River Canada Northward; and also all that Island or Islands commonly called by the several Name or Names of Mattowacks for Long Island situate, lying and being towards the West of Cape Codd and the Narrohigansetts, abutting upon the Main Land between the two Rivers there, called or known by the several Names of Connecticut and Hudson's River, together also with the said River, called Hudson's River, and all the Lands, from the West-side of Connecticut River, to the East-side of Delaware Bay, and also all those several Islands, called or known by the Names of Martin Vineyards, and Nantukes, otherwise Nantuckett, together with all the Lands, Islands, Soils, Rivers, Harbours, Mines, Minerals, Quarries, Woods, Marshes, Waters, Lakes, Fishings, Hawking, Hunting and Fowling, and all other Royalties, Profits, Commodities, and Hereditaments, to the said several Islands, and Premises, belonging and appertaining, with their and every of their Apurtenances, and all his said late Majesty King Charles the Second's Right, Title, Interest, Benefit, Advantage, Claim and Demand, of, in or to the said Lands and Premises, or any Part or Parcel thereof, and the Reversion and Reversions, Remainder and Remainders, together with the Yearly and other the Rents, Revenues, and Profits, of all and singular the said Premises, and of every Part and Parcel thereof, to hold unto the said James, Duke of York, his Heirs and Assigns for ever, to be held as of the Manor of East-Greenwich, in the County of Kent; and his said late Majesty, in and by the said last recited Letters Patent, Gave and Granted unto the said James, Duke of York, in Fee, divers Powers of Government, over the said Country and Territory

thereby granted; as in and by the said last recited Letters Patent under the Great Seal of England, or an Exemplification thereof, or the Inrollment thereof remaining of Record in this Honourable Court, relation being thereunto had, may fully and at large appear.

That, by Virtue, of, and under the said last recited Grant and Letters Patent, so made to the said Duke of York, he the said Duke of York, by his Governors, Deputy Governors, and other Officers became, and was, really and actually, and also lawfully and rightfully, seized and possessed of and intituled to the said great Settlement of the Dutch, on that Tract since divided into and called West and East New Jersey and New York, and also of the said small and ancient Settlement of the Swedes and Dutch in those Parts, now called the three lower Counties of Newcastle, Kent, and Sussex, upon Delaware, as belonging and appertaining to the said great Settlement. And the said James Duke of York by his Deputy-Governors, or other Officers, did and exercised all sorts of Acts of Ownership, Proprietorship and Government, whatsoever, within the said Tract now called the three lower Counties, for many Years together.

And the said small Settlement, when in the Possession of the Dutch, and afterwards, when in the Possession of the said Duke of York, was always a Dependant upon and belonging and appertaining to the said great Settlement, till Granted away by the said Duke of York.

That after his said late Majesty, King Charles the Second, had made such Grant as aforesaid, to the said James Duke of York, a certain Treaty was concluded at Breda, in, or about the Year 1667, between his said late Majesty, King Charles the Second, and the States General whereby the said States General, ceded and yielded, to his said late Majesty, all Places whereof his said late Majesty had been in Possession on the 10th day of May, in the said Year 1667; as by the said Treaty, had the Plaintiffs the same to produce, relation being thereunto had, might and would more fully appear.

That in, or about the Year 1672, War was declared, between England and Holland, and thereafter, to wit, in, or about the Month of July 1673, the Dutch entered into, and upon their said former great Settlement, upon the Lands now called West and East New-Jersey and New-York, and likewise into and upon their said former smaller Settlement, upon the Lands now called the three lower Counties of Newcastle, Kent, and Sussex.

But afterwards, to wit, in, or about the Month of February 1673, a Treaty of Peace was concluded, between England and Holland, whereby all Countries which had been taken by each from the other, since the said last mentioned War which broke

out in 1672, were agreed to be restored by each of the contracting Parties to the other, from whom the same had been taken, as by the said last mentioned Treaty, had the Plaintiffs the same to produce, relation thereunto had, might and would more fully appear.

That in a very short time after the concluding the said last mentioned Treaty of February 1673, his said late Majesty, King Charles the Second, and the said James Duke of York, sent over Colonel Edmund Andros, afterwards Sir Edmund Andros, Knight, or some other Person or Persons, with Authority to receive from the Dutch their said Settlements, herein before mentioned, and the Government thereof, and to continue in the Command thereof, under the said James Duke of York, as by such Commissions and Authorities, had the Plaintiffs the same to produce, relation being thereunto had, would and might more fully appear.

That, immediately after the giving such Commissions and Authority to the said Colonel Andros he went over to those Parts, and took Possession of both the said great Settlement, and small, for and in behalf of the said James Duke of York, and continued in Possession thereof, and under the Authority, and in the behalf of the said James Duke of York, did, for many Years together, Exercise all sorts of Acts of Ownership, Propriety, and Government, whatsoever, throughout the said great and small Settlements herein before mentioned, and particularly throughout the said small Settlement, upon the said Tracts now called the three lower Counties of Newcastle, Kent, and Sussex. As by the several Grants, Commissions, and other Acts and Instruments, made and executed by the said Colonel Andros, relation being thereunto had, may and will most manifestly and notoriously appear.

That in order to make to the said Duke of York a clear Title to the said Countries, which had been before granted to him in 1664, as aforesaid, and to prevent any Question touching the Validity of the same in respect of the Entry made thereon, or on some Part, thereof, by the Dutch in 1673, his said late Majesty, King Charles the Second, by his Letters Patent under the Great Seal of England, bearing Date at Westminster, on, or about the 29th Day of June, which was in the 26th Year of his Reign, and in the Year of our Lord 1674, did give and grant, unto the said James Duke of York, his Heirs, and Assigns, the same Territories which were granted by the said former Letters Patent, and in the same Words.

And his said late Majesty King Charles the Second, did, in and by the said last Letters Patent, give and grant unto the said James Duke of York, in Fee, divers Powers of Government

over the said Country and Territory thereby granted: as by the said last Letters Patent, under the Great Seal of England, or an Exemplification thereof, or the Enrollment of the same, remaining as of Record in this Honourable Court, relation being thereunto had, doth and may appear.

That the Plaintiffs late Father, on or about the 1st Day of June, in the Year of our Lord 1680, petitioned his said late Majesty King Charles the Second, in Consideration of Debts due to him or his Father from the Crown, to grant him Letters Patent, for a Tract of Land in America, lying North of Maryland on the East bounded with Delaware River, on the West limited as Maryland, and Northward to extend as far as Plantable.

That on or about the 14th of June 1680, the Plaintiffs said late Father was called in, by the Lords of the Committee of his said late Majesty's Most Honourable Privy Council for the Affairs of Trade and the Plantations, to whose Consideration the said Petition had been referred, and being asked what extent of Land he would be contented with Northerly? He declared himself satisfied with three Degrees, to the Northward.

That the Agents for the said then Lord Baltimore, had Copies of the said Petition, and were heard upon any Objections they had to offer against the passing such a Grant as was prayed by the said Petition, and in relation to the Boundaries of Maryland; as by several Orders and Minutes in the Register Books of his Majesty's Privy Council, bearing Date respectively the 14th of June, in the Year of our Lord 1680, the 25th of the said Month, in the said Year, and the 16th of December, in the said Year of our Lord 1680, relation being thereunto had, may more fully and at large appear.

That pursuant to the Advice and Reports of the Lords of his said late Majesty's Most Honourable Privy Council, by Letters Patent, under the Great Seal of England, bearing Date at Westminster, on or about the 4th Day of March, which was in the 33d Year of the Reign of his late Majesty King Charles the Second and in the Year of our Lord 1680, his said late Majesty did, of his said Majesty's special Grace, certain Knowledge, and meer Motion, give and grant, unto William Penn Esq; the Plaintiffs said late Father, his Heirs and Assigns, all that Tract, or Part of Land in America, with all the Islands therein contained, as the same was bounded, on the East, by Delaware River, from twelve Miles distance, Northwards of Newcastle Town, unto the three and fortieth Degree of Northern Latitude, if the said River did extend so far Northwards; but if the said River should not extend so far Northward, Then, by the said River so far as it did extend, and, from the head of the said

River, the Eastern Bounds were to be determined by a Meridian Line, to be drawn from the head of the said River unto the three and fortieth Degree; the said Lands to extend Westwards, five Degrees in Longitude, to be computed from the said Eastern Bounds; and the said Lands to be bounded, on the North, by the beginning of the forty-third Degree of Northern Latitude, and, on the South, by a Circle, drawn at twelve Miles distance from Newcastle, Northwards and Westwards, unto the beginning of the fortieth degree of Northern Latitude; and, then, by a streight Line, Westwards, to the Limit of Longitude thereabove mentioned; and also the free and undisturbed Use and Continuance in, and Passage into and out, of, all and singular Ports, Harbours, Bays, Waters, Rivers, Isles, and Inletts belonging unto, or leading to and from, the Country or Islands aforesaid; and all the Soil, Lands, Fields, Woods, Underwoods, Mountains, Hills, Fens, Isles, Lakes, Rivers, Waters, Rivulets, Bays and Inletts, situate or being within, or belonging unto, the Limits and Bounds aforesaid; with all and singular the Appurtenances, and divers Powers of Government: To hold unto the said William Penn, his Heirs, and Assigns for ever.

And, by the same Letters Patent, the said Country was erected into a Province, and called Pensilvania, as in and by the said last recited Letters Patent, under the Great Seal of England, relation being thereunto had, may more fully appear.

That although the said Province of Pensilvania did lie entirely on the West side of Delaware River, yet, in respect of the said Lands called the three Lower Counties, and in respect of other Lands also, which were enjoyed by the said Duke of York, as belonging to the said great Settlement on the East side of the said River, before the said Letters Patent to the plaintiffs said Father, passed the Great Seal, the Lords of his late Majesty's Privy Council, thought the Consent of the said Duke of York necessary; and, accordingly, the said Duke of York's Assent to the said Grant thereof was had and given, to the Right Honourable the Lords of the Committee of Plantations, or before a Committee of the Privy Council of his said late Majesty King Charles the Second.

And, not only so, but, by Indenture, under the Hand and Seal of the said James Duke of York bearing Date on or about the 21st Day of August, which was in the Year of our Lord 1682, and made or mentioned to be made, between the said James Duke of York of the one Part, and the said William Penn the Plaintiffs said late Father of the other Part, reciting that the said Duke of York had in manner aforesaid, signified his Assent to the making of the said Grant of Pensilvania to the Plaintiffs said late Father, before the same had passed the Great

Seal, and that the said Duke was willing and pleased to confirm, and make any further Assurance of, the said Tract of Land and Premises, unto the said William Penn, and his Heirs, the said Duke, out of a special Regard to the Memory, and many faithful and eminent Services theretofore performed by the said Sir William Penn, to his said Majesty, and to the said Duke and for the better encouraging the said William Penn, to proceed in the Cultivating and Improving of the said Tract of Ground and Islands therein and thereunto, belonging, and reducing the Savage and Barbarous Natives thereof to Civility, and for the Good will which the said Duke had and bore to the said William Penn, and for other good Causes and Considerations, the said Duke, did, in and by the said last mentioned Indenture, remise, release, and for ever quit Claim unto the said William Penn, his Heirs, and Assigns, all the Estate, Right, Title, Interest, Rents, Services, Duties, Payments, Property, Claim and Demand, whatsoever, of the said Duke, of into or out of the same, to hold unto the said William Penn, his Heirs, and assigns for ever, as by the said recited Indenture, relation being thereunto had, may more fully appear.

That, as the said Province of Pensilvania, lies North of the said Province of Maryland, so, by the said last recited Letters Patent for Pensilvania, the General Bounds of the said Province of Pensilvania, on the South Part, are expressly said to be the beginning of the fortieth Degree of Northern Latitude (with an Exception, at one Corner, of the Circle at twelve Miles Distance from Newcastle) so that, as by the said first recited Letters Patent the Northern Bounds of Maryland were to extend Northwards as far as to the fortieth Degree, this second Grant, containing the Province of Pensilvania, is, by his said Majesty's said last recited Letters Patent, made to commence from the beginning of the said fortieth Degree, and to run, Northwards, three Degrees (pursuant to the said Declaration of the Plaintiffs late Father) up to the beginning of the forty-third Degree.

That, very soon after the said Grant was made by the said late King Charles the Second, and by the said Duke of York, of the said Province of Pensilvania, unto the Plaintiffs said late Father, as aforesaid, the said James Duke of York, by his Indenture of Feoffment, under his Hand and Seal (afterwards duly and most solemnly executed with Livery and Seisin) bearing Date on or about the 24th Day of August, in the Year of our Lord 1682, and made between the said James Duke of York of the one Part, and the said William Penn of the other Part, did, out of a special regard to the Memory, and many faithful and eminent Services thentofore performed by the Father of the said William

Penn to the said King Charles the Second, and to the said Duke of York, and for other good Causes and Considerations therein mentioned, Bargain, Sell, Enfeoff and Confirm, to the said William Penn, his Heirs, and Assigns, for ever, all that the Town of Newcastle, otherwise called Delaware, and the Tract of Land lying within the Compass or Circle of twelve Miles about the same situate, lying, and being upon the River Delaware in America, and all Islands in the said River Delaware, and the said River and Soil thereof, lying North of the Southermost part of the said Circle of twelve Miles about the said Town together with all Rents, Services, Royalties, Franchises, Duties, Jurisdictions, Liberties, and Privileges thereunto belonging, and all his Estate, Right, Title, Interest, Powers, Property, Claim and Demand, whatsoever, therein and thereto, to hold unto the said William Penn, his Heirs, and Assigns for ever.

And the said James Duke of York, by his other Indenture of feoffment, under his Hand and Seal (afterwards duly and most solemnly executed with Livery and Seisin) also bearing Date the same 24th day of August 1682, and made between the said James Duke of York of the one Part, and the said William Penn of the other Part, for the like Considerations as were mentioned in the said before recited Indenture of Feoffment, did Bargain, Sell, Enfeoff and Confirm, unto the said William Penn, his Heirs and Assigns for ever, all that Tract of Land upon Delaware River and Bay, beginning 12 Miles South from the Town of Newcastle, otherwise called Delaware, and extending, South, to the Whore-Kills, otherwise called Cape Hinlopen, together with free and undisturbed Use and Passage into and out of all Harbours, Bays, Waters, Rivers, Isles and Inletts, belonging or leading to the same, together with the Soil, Fields, Woods, Underwoods, Mountains, Hills, Fens, Isles, Lakes, Rivers, Rivulets, Bays and Inletts, situate in, or belonging unto, the Limits and Bounds therein before mentioned, together with all sorts of Minerals, and all the Estate, Interest, Royalties, Franchises, Powers, Privileges, and Immunities, whatsoever, of the said Duke of York, therein or thereto: To hold unto the said William Penn, his Heirs and Assigns for ever.

And the said Duke of York did, in and by each of the said several and respective Indentures of Feoffment, Covenant, for himself, his Heirs and Assigns, to and with the said William Penn, his Heirs and Assigns, to make, or cause, or procure to be made, all such further Acts, Conveyances, and Assurances of the Premises therein respectively conveyed to the said William Penn and his Heirs, as by the Council of the said William Penn and his Heirs, or Assigns should be devised, advised or required.

And the said Duke of York did, further, in and by each of the same respective Indentures of Feoffment, make, and constitute and appoint two Persons, namely, John Moll Esq; and Ephraim Harman, Gent., jointly and either of them, severally, his Attorneys, to enter into the Premises by the same respective Indentures of Feoffment conveyed, and take Possession and Seisin thereof, and the same to deliver to, and leave in, the Possession of the said William Penn, his Heirs and Attorneys, as in and by the said several and respective Indentures of Feoffment, relation being unto them severally and respectively had, may more fully appear.

That on or about the 28th Day of October 1682, the Plaintiffs said late Father, the said William Penn, either in his proper Person, or by his Attorney, did demand, and the said John Moll, one of the said Duke's Attorneys, did, with great form and solemnity, deliver, and leave the said William Penn in the quiet and peaceable Possession and Seisin of the Premises contained in both the said respective Indentures of Feoffment, pursuant to the Power and Authority given by the same respective Indentures of Feoffment, by delivery to the said William Penn of the Fort at Newcastle, and of Turf and Twig, and Water and Soil of the River Delaware; and, not only so, but the few Tenants, then being thereon, did attourn, and submit and promise to obey the said William Penn, and to live quietly under his Government.

And, moreover, in a very few days after such Possession and Seisin delivered, to wit, some time in the Month of November 1682, the said Duke of York's Commander in Chief and Council, established at New York by a Proclamation or Declaration, reciting the said Grants made by the said Duke of York, by the said Feoffments to the said William Penn, and setting forth, that the said Governor and Council were fully satisfied of the Right of the said William Penn, they therefore made a Declaration of the same, to prevent any doubt or trouble, and to give the Justices of Peace, Magistrates and other Officers within those Tracts, thanks for their good Services done in their several Offices and Stations during the time they had remained under his Royal Highness his Government, (meaning the Government of the said James Duke of York.) And further declaring, that the said Governor and Council expected no further Account than that they, the said Justices of the Peace, Magistrates and other Officers, should readily submit and yield all due Obedience and Conformity to the powers granted to the said William Penn.

Which said Proclamation or Declaration was addressed or directed to the several Justices of the Peace, Magistrates and

other Officers at Newcastle, St. Jones Deale, alias Whore-Kill, at Delaware, or within any of the Bounds and Limits mentioned in the said recited Indentures of Feoffment to the said William Penn: as by the said Proclamation or Declaration, or an authentick Copy thereof, relation being thereunto had, may more plainly and fully appear.

And the Plaintiffs expressly Charge that the Lands, comprized and included within the said two respective Indentures of Feoffment, are those Lands which are now called by the Name of the three lower Counties of Newcastle, Kent, and Sussex.

And that the said William Penn entered into the peaceable Possession of the said Province of Pensilvania in the Month of June 1681.

And into the peaceable Possession of all the three lower Counties in the Month of October; or at furthest in the Month of November in the Year 1682.

And that the said William Penn, and those claiming under him now are, and from the time of such the respective Entries of the said William Penn as aforesaid, have constantly and continually, and without any the least Intermission, been in the Possession of the same, respectively, from those respective times, unto this Hour.

And that the said William Penn, at his own very great Expence, and without one Shilling Charge to, or Assistance from, either the Crown of the Publick, did People and settle the said Province of Pensilvania, and also the said three lower Counties.

And that the same do, at this time, together, make by far the most flourishing and populous Province and Colony in America, for the Age of the same.

And that the Number of Inhabitants, now within the said three lower Counties only, (exclusive of a far greater Number of Souls within the said Province of Pensilvania, properly so called,) is at least 40,000 Souls.

That the said Duke of York having, by each of his said Indentures of Feoffment of the 24th of August 1682, covenanted with the Plaintiffs Father, to make and procure further Assurance of the Premises contained within the said recited Indentures of Feoffment as aforesaid, he the said Duke of York did, in pursuance and part of Performance of his said Covenants, very shortly after the Date of the said Feoffments make his Application to the said King Charles the Second, for a more particular and express Grant, under the Great Seal of England, of the said three lower Counties, or of the Lands contained in the said Feoffments and since called the three lower Counties, and did procure and obtain the same.

And his said late Majesty King Charles the Second, by his

Letters Patent, under the Great Seal of England, bearing Date at Westminster, on or about the 22d Day of March, which was in the 35th Year of his Reign, and in the said Year of our Lord 1682 (which was not quite seven Calendar Months after the Date of the said Duke's said Feoffments) did give and grant unto the said James Duke of York, his Heirs and Assigns, all that the Town of Newcastle, otherwise called Delaware, and Fort therein, or thereunto belonging, situate, lying, and being between Maryland and New Jersey in America. And all that Tract of Land lying within the Compass or Circle of 12 Miles about the said Town, situate, lying and being upon the River of Delaware, and all Islands in the said River of Delaware, and the said River, and Soil thereof, lying North of the Southernmost part of the said Circle of 12 Miles about the said Town. And all that Tract of Land, upon Delaware River and Bay, beginning 12 Miles South from the said Town of Newcastle, otherwise called Delaware, and extending, South, to Cape Lopin, together with all the Lands, Islands, Soil, Rivers, Harbours, Mines, Minerals, Quarries, Woods, Marshes, Waters, Lakes, Fishings, Hawkings, Huntings and Fowlings, and all other Royalties, Privileges, Profits, Commodities, and Hereditaments to the said Town, Fort, Tracts of Lands, Islands, and Premises, or to any or either of them belonging or appertaining, with their and every of their Appurtenances, situate, lying and being in America. And all his said late Majesty's Estate, Right, Title, Interest, Benefit, Advantage, Claim and Demand, whatsoever, of, in, or to the said Town, Fort, Lands, and Premises, or any Part or Parcel thereof, and the Reversion and Reversions, Remainder and Remainders thereof, together, with the Yearly and other Rents, Revenues, and Profits of the Premises, and of every Part and Parcel thereof, to hold unto the said James Duke of York, his Heirs and Assigns for ever, to be held as of the Manor of East Greenwich in the County of Kent, with full and absolute Powers and Authorities therein contained, to the said Duke of York and his Heirs, Deputies, Agents, Commissioners and Assigns, Power and Authority of Government and Command, over all such Persons as should Adventure into any the Places aforesaid, or that should at any time thereafter inhabit within the same.

And, immediately after the said last recited Letters Patent had passed the Great Seal, the said Duke of York, who was no other than a Trustee for the said William Penn therein, and had obtained them in pursuance of his Covenant for further Assurance, did deliver over the same Original last recited Letters Patent under the Great Seal to the Plaintiffs Father, and

the same is now in the Custody and Possession of the Plaintiffs ready to be produced to this Honourable Court, as by the said last recited Letters Patent, under the Great Seal of England, so in the Plaintiffs Custody, relation, being thereunto had, may more fully appear.

That after the said last recited Letters Patent had passed the Great Seal, and had been delivered over to the Plaintiffs Father as aforesaid, the said Duke of York, in further pursuance of his said Covenants with the Plaintiffs said Father did sollicite from the said King Charles the Second, a yet further, and more beneficial, Grant of the Lands now called the three lower Counties, and of the Appurtenances thereto; and such further Grant was preparing, in order to pass the Great Seal, but was stopt, for some time, upon a Petition presented to his said late Majesty King Charles the Second in Council by Richard Burk, calling himself Servant to the then Lord Baltimore, (which said then Lord Baltimore the Plaintiffs Charge was either Son, or Grandson, of, and Heir at Law to the said Cecilius.)

And such last mentioned Petition, in behalf of the said then Lord Baltimore, having been presented to his said Majesty, was referred by his said Majesty's Order in Council bearing Date on or about the Day of May 1683, to the Consideration of the then Committee of Trade and Foreign Plantations (which Committee the Plaintiffs Charge did, then, consist of Lords of his said Majesty's Most Honourable Privy Council.)

And, before the said Committee the said Richard Burk, and the said then Lord Baltimore himself, and their Council Learned in the Law, and also the Plaintiffs Father, and his Council Learned in the Law, were many and divers times heard, for near two Years and an half together.

And a very long Suit and Trial were had thereon, between the Plaintiffs said Father, and the said then Lord Baltimore, touching the Right and Title to the said Land and Soil of the said three lower Counties, as may appear by the Register Books and Proceedings of the said Committee of Council, or Committee of Trade and Foreign Plantations.

And, in the Prosecution of the said Suit, it is, from time to time, continually taken notice, and expressly mentioned, in the Minutes or several Orders made by the said Committee thereon, that the Dispute and Difference was a Dispute between the said then Lord Baltimore and the Plaintiffs said Father, although the Plaintiffs said Father did, some, times, make use of the said Duke of York's Name therein, as holding under the Grants, and Covenants for further Assurance, of the said Duke of York, and altho' the said Duke himself, did, by his Council and other Agents, sometimes, assist and interpose in the said Suit.

And which the Plaintiffs humbly rely on as a further most express, and manifest, Declaration, on the part of the said Duke, that the said Grant of the said three lower Counties, which he had obtained from the Crown after his said Feoffment to the Plaintiffs said Father, and also the further Grant which he was then soliciting to obtain, were in Trust for, and for the Benefit of, the Plaintiffs said Father, and not for the Benefit or Advantage of the said Duke of York.

And the Plaintiffs do expressly Charge that several of the Minutes, Orders, and Reports, made by the said Committee of Council, upon and during the Continuance, of the said Dispute, were of the several and respective Dates for that purpose herein after mentioned and set forth, and so the same now appear upon the Register Books of the said Committee for Trade and Foreign Plantations, that is to say, the 17th and 27th of April, the 30th of May, the 12th of June and the 12th of February, 1683, the 2d, 16th, and 23d of July, the 30th of September, the 9th of December, and the 17th of March 1684, the 18th and 26th of August, the 2d of September, the 8th, 17th and, 31st of October, and the 7th of November 1685.

And the final order of Council, made thereon, upon the 13th Day of November 1685, was in the following Words, that is to say:

At the Court at Whitehall, the 13th Day of November 1685, present the King's most Excellent Majesty, his Royal Highness Prince George of Denmark, Lord Archbishop of Canterbury, Lord Chancellor, Lord Treasurer, Lord Privy Seal, Duke of Ormond, Duke of Beaufort, Duke of Queensberry, Lord Chamberlain, Earl of Huntingdon, Earl of Bridgewater, Earl of Peterborough, Earl of Sunderland, Earl of Craven, Earl of Berkeley, Earl of Nottingham, Earl of Plymouth, Earl of Murray, Earl of Middleton, Lord Viscount Fauconberge, Lord Viscount Preston, Lord Viscount Melfort, Lord Bishop of London, Lord Dartmouth, Lord Gadolphin, Mr. Chancellor of the Exchequer.—The following Report from the Right Honourable the Lords of the Committee for Trade and Foreign Plantations, being this Day read at the Board.—The Lords of the Committee for Trade and Plantations having pursuant to his late Majesty's Order in Council of the 31st of May 1683, examined the Matters in Difference, between the Lord Baltimore, and William Penn Esq; in behalf of his present Majesty concerning a Tract of Land in America, commonly called Delaware, Their Lordships find that the Land intended to be granted by the Lord Baltimore's Patent was only Land uncultivated and inhabited by Savages; and that this Tract of Land, now in Dispute, was inhabited and planted by Christians at and before the Date of the Lord Balti-

more's Patent, as it hath been ever since, to this time, and continued as a Distinct Colony from that of Maryland, so that their Lordships humbly Offer their Opinion that, for avoiding further Differences, the Tract of Land, lying between the River and the Eastern Sea on the one side, and Chesapeake Bay on the other, be divided, into equal Parts, by a Line, from the Latitude of Cape Hinlopen, to the 40th Degree of Northern Latitude, and that one half thereof, lying towards the Bay of Delaware, and the Eastern Sea, be adjudged to belong to his Majesty, and that the other half remain to the Lord Baltimore, as comprized within his Charter.—Council Chamber, 7th November 1685. His Majesty, well approving of the said Report, it was thereupon Ordered, by his Majesty in Council, that the said Lands be forthwith divided, accordingly.—Whereof the said Lord Baltimore, and William Penn Esq; together with their respective Officers, and all others whom it may concern are to take notice, and give due and ready Obedience thereunto.

As by the said several and respective Minutes, Report and Orders, or the Register Books of his Majesty's Privy Council, and of the said Committee of Trade and Plantations, relation being thereunto respectively had, may more fully and at large appear.

That during the said Contest in the Years 1683, 1684, and 1685, the said then Lord Baltimore, upon the 8th of October 1685, produced to the then Committee of Trade and Plantations an unauthentick blank Paper, not signed or sealed at all, but drawn up in the Form of the Draught of a Report and Order of the Committee of Foreign Plantations, and supposed to be made on the 4th of April 1638, touching Differences between some Lord Baltimore and one Mr. Clayborne, about the Isle of Kent, in order to shew that former Board's Opinion touching the Lord Baltimore's Right to the Isle of Kent; and the said then Committee of Trade and Plantations, in 1685 put off the Matter, and gave the said Lord Baltimore time to procure an attested Copy of such pretended Report or Order in 1638, which the said Lord Baltimore undertook to procure.

But nine Days after, the said Lord Baltimore declared, in Person, to the said Committee of Trade and Plantations, namely on the 17th of October 1685, that he could not find the Original, whereby an attested Copy might be procured.

Neither, as the Plaintiffs Charge, was there ever any such Order.

That, before the time the said last mentioned Order of Council of November 1685, was made, the Plaintiffs Father had not made any very large or very expensive Improvements on the said three

lower Counties, but, after the same Order was made, the Plaintiffs Father, conceiving that by the same Order the Matter of the said then Lord Baltimore's ill-grounded Claim or Pretence was finally concluded and at an end, did, at a prodigious Expence, of vast Sums of Money, which were raised by Mortgage and Sale of his Family Estate in the Kingdoms of England and Ireland, and by great Sums of Money which he borrowed, even upon Mortgage of the Lands in America so granted to him as aforesaid, and by purchasing the Lands from the Indian Natives and Owners, and by repeated and continual presents, to, and Treaties with, the Indians, and by great and continual Pains, Labour and Industry, and by many repeated Toils and Hazards of his Life, in Voyages to Pensylvania, and the three lower Counties, and back again, and otherwise, very greatly distress and ruin his Family and Estate, but did, as greatly, settle, cultivate and people the said Lands, so granted to him as aforesaid, and more particularly the said three lower Counties.

So that, at this time, most part, if not all of the Lands in the said three lower Counties are taken up and cleared, and many thousands of beautiful Plantations are made therein, and also many Towns, Villages, Churches, Meetings, Court-Houses, Assembly-Houses, Forts, Harbours, Piers, Dwelling Houses and other publick and private Structures, Buildings, Edifices and Improvements, are built and made therein.

That the Swedes and Dutch, who anciently were in those Parts now called the three lower Counties, had, during the time of their several and respective Possessions, made divers considerable Purchases of great Tracts of Lands, within what are now called the said three lower Counties, from the Indian Natives, Owners and Possessors of such Lands, for valuable Considerations, and the right in and to such Indian Purchases, passed to and was well and legally vested in, the Plaintiffs said Father in Fee.

And, not only so, but the Plaintiffs said Father, himself, after the said beforementioned Grants made to and in Trust for him as aforesaid, did, for valuable Considerations, purchase of the Indian Natives and Owners of the Lands comprized within the Limits of the said three lower Counties, and from their Kings and Sachems, all those Lands from Quing Quingus, called Duck Creek, unto Up-land, called Chester Creek, laying all along by the side of Delaware River, and so, between the said Creeks backwards as far as a Man can ride with a Horse in two days; and accordingly, by deed or deeds, duly executed, the said Indians, and their Heads and Sachems, did convey to the Plaintiffs said Father, his Heirs and Assigns, all the same Lands last mentioned, as by the said deeds and Conveyances,

had the Plaintiffs the same at present in this Kingdom to produce, relation being thereunto had, might and would more fully appear.

And the Plaintiffs expressly Charge, that the same last mentioned Lands, comprized in the said last mentioned Deeds or Conveyances to their Father from the Indians, do, of themselves, make up at least three fourth Parts of all the Lands within the said three lower Counties, besides that the other Parts of the same three lower Counties have been, heretofore, purchased by the said Swedes and Dutch, and by the Plaintiffs, and those under whom they Claim.

That from the said Month of Nov. 1685, unto the Month of Jan. 1708, which was above 23 Years, the said Lord Baltimore, who had had so many Hearings in the Years 1683, 1684 and 1685, and at last such a full and final determination made against his ill-grounded Pretensions in the Year 1685 as aforesaid, suffered the Plaintiffs Father to go on peaceably and quietly, without the least Claim or Interruption whatsoever, to make such Purchases, and to people, settle, clear, cultivate, improve, and govern the said three lower Counties as aforesaid, in which said 23 Years the greatest part of the Expence of the Plaintiffs Father was laid out, during the Infancy and first peopling and clearing of the said Province or Colony.

But in the Month of Jan. 1708, the very same Charles Lord Baltimore, who by himself, and his Agents and Council had had so many Hearings allowed him in the Years 1683, 1684, and 1685 as aforesaid, presented a Petition to her late Majesty Queen Anne, and, after having mentioned the Name of the Plaintiffs Father, he the said Lord Baltimore did expressly suggest, and pray, by his said Petition to her said Majesty in Jan. 1708, amongst other things, in the Words following, that is to say, "That on "the 7th of Nov. 1685 the said Penn, falsely suggesting that "your Petitioner by his Grant from your Royal Grandfather "was to have no Land but what was cultivated by Savages "(though the said Suggestion was directly contrary to the "Words and Intent of your Petitioner's Grant) obtained an "Order of Council for dividing an Isthmus of Land lying between the River and Bay of Delaware and the Eastern Sea on "the one side, and the Chesapeake Bay on the other side, and "thereby has endeavoured without your Petitioners being "ever heard to or having Notices of such Order, to deprive "your Petitioner of his Inheritance granted to him by the "Bounty of your Royal Grandfather, your Petitioner therefore "most humbly prays that the said Order, thus surreptitiously "gotten, may be set aside."

That the said Petition of the said Charles Lord Baltimore in

January 1708, being on the 9th of the same January 1708, referred by her said late Majesty Queen Anne, to the Consideration of the then Lords Commissioners for Trade and Plantations the Plaintiffs Father the said William Penn upon the 27th of the same January 1708 presented his Petition to her said late Majesty representing that the Matters in difference had, upon the Lord Baltimore's own Petition and Request, been examined before the then Lords Committee for Trade and Plantations, at that time consisting of the whole Privy Council, in the Years 1684 and 1685; who, after several Hearings of the Lord Baltimore and the said William Penn, and of their respective Council and Advocates and long Deliberations had of the Allegations and Proofs produced before them had reported their Opinions thereon and how the Boundaries should be settled; which Report had in the Month of November 1685, been approved of and confirmed by an Order of the King in Council; and that the said William Penn not doubting but that the Lord Baltimore would acquiesce under the Royal Determination which himself had desired the said William Penn and his Tenants, had ever since, improved the disputed Lands which were allotted to the said William Penn, but, to his great Surprise, after 23 Years quiet Possession under that Sentence the Lord Baltimore had petitioned the Queen to set aside the King's Order in Council, which was intended to be final; and the said William Penn, for the Reasons in such his Petition contained, prayed her said late Majesty not to countenance an attempt so injurious to Property and the Rights of her Subjects, but to order the Lord Baltimore's Petition to be dismissed.

That her said late Majesty, by her Order in Council of the 27th Day of January 1708, was pleased to order, and did order, that the said Petition of the said Lord should be and was thereby dismissed, and that the Lords Commissioners for Trade and Plantations, to whom that Petition was by an Order of the 9th then Instant referred, should not proceed to examine into the Allegations thereof as by the same Order was directed.

That the said Charles Lord Baltimore, not yet resting satisfied, He, on the 19th of May 1709, presented another Petition to her said late Majesty, again expressly asserting that the said Order of Council of the 7th of November 1685, had been obtained by false Suggestions of the said William Penn, and without the said Charles Lord Baltimore being ever heard by himself or Council; and the said Charles Lord Baltimore, in his said Petition of May 1709, took notice of the Allegation in the Petition of the said William Penn of January 1708, that the said Order of Council had been obtained after several Hearings, of the said Lord Baltimore and his Council, but, in Answer

and direct Contradiction thereto, the said Lord Baltimore asserted that he could fully prove that he had no Notice of the said Order.

That her said late Majesty by her Order in Council of the said 19th of May 1709, was pleased to order that the matter of the said last mentioned Petition should be heard before her Majesty in Council, in June then next, whereof all Parties concerned were to take Notice and come prepared to be heard with their Council learned at that time, accordingly.

That the said Charles Lord Baltimore and the Plaintiffs Father were accordingly heard, before her said late Majesty in Council, and thereupon, by her said late Majesty's Order in Council, of the 23d of June 1709, reciting the said Lord Baltimore's last mentioned Petition and Allegation that the said Order of 1685, had been obtained by the false Suggestions of the said William Penn, and without the said Lord Baltimore's having been heard thereupon, and that both Parties had, pursuant to her said Majesty's Order, that Day attended, and been fully heard with their Council learned, and that it had appeared, by authentick Copies of Proceedings at that Board, that as well the then Petitioner the said Charles Lord Baltimore, as the said William Penn, had been divers times heard, before the making of the said Order, her said late Majesty, with the Advice of her Privy Council, was pleased to order that the said Lord Baltimore's Petition should be dismissed that Board. And that the above-mentioned Order of Council of the 13th of November 1685, should be ratified and confirmed in all its Points, and be put in Execution, without any further delay; as by the said several and respective Petitions and Orders in January 1708, and in May and June 1709, relation being thereunto respectively had, may more fully appear.

That the matter being again fully and finally settled and adjusted as aforesaid by the said Order of June 1709, the Plaintiffs Father remained in quiet and peaceable possession of the said three Lower Counties, ever after during all the remainder of his Life.

And the said William Penn, on or about the 30th Day of July in the Year 1718, departed this Life, having first duly executed his last Will and Testament, in writing, bearing Date some time in or about the Year 1711 or 1712, and thereby devised to his dear Wife Hannah Penn, the Plaintiffs late Mother (since deceased) and several other Persons and their Heirs, all his Lands, Tenements, and Hereditaments, whatsoever, Rents and other Profits, situate, lying and being in Pensilvania and the Territories thereunto belonging, or elsewhere in America, upon Trust that they should sell and dispose of so much thereof as

should be sufficient to pay all his just Debts, and from and after Payment thereof convey 40,000 Acres, part thereof, in manner therein directed, and all the rest of his Lands and Hereditaments whatsoever, situate, lying and being in America, He willed that his said Trustees should convey to and amongst his Children which he had by his then Wife, in such proportions, and for such Estates, as his said Wife should think fit; and all his personal Estate in Pensilvania, and elsewhere, and Arrears of Rent due there, he gave to his said Wife, whom he made sole Executrix for the equal Benefit of her and her Children.

Which said last Will and Testament was duly proved, by the said Hannah the Plaintiffs Mother, the sole Executrix thereof, on or about the 4th Day of November 1718, in common form, in the Prerogative Court of the Archbishop of Canterbury, and was afterwards duly proved by Witnesses, upon, a proper Suit for that purpose brought against the Heir at Law of the said William Penn, and established by decree in his Majesty's Court of Exchequer at Westminster, as in and by such last Will and Testament, and the several and respective Proofs thereof, relation being thereunto had, may more fully appear.

That the said Hannah Penn, by deed-poll under her Hand and Seal duly executed, bearing Date on or about the 18th Day of November, in the said Year of our Lord 1718, reciting amongst other Things the said last Will and Testament of the said William Penn, the said Hannah Penn, in pursuance of all Powers which she had or was invested with, did direct and appoint all the rest and residue of the Lands, Tenements, and Hereditaments, and of the Rents and other Profits of them, late of the said William Penn deceased, lying and being in Pensilvania aforesaid and the Territories thereunto belonging, or elsewhere in America, that should remain after the Provisions in the said Will (subject nevertheless to the debts of the said William Penn deceased, according to his said Will) should be conveyed in manner following, that is to say, three full and equal Parts of such rest and residue (in six equal parts to be divided) of and in all that the Country or province in America called Pensilvania, and three full equal sixth parts of all Lands, Tenements, and Hereditaments whatsoever, Rents and other profits late of the said William Penn deceased, within or part of the said Country or Province, should be conveyed by the said Trustees for the time being and the Survivor of them, and the Heirs and Assigns of such Survivor, to and to the Use of the Plaintiff John Penn, eldest Son of the said Hannah by the said William Penn deceased, and of the Heirs and Assigns of the said John Penn; and, as to the remaining three sixth parts of the same that the said Trustees should convey the same to the Use

of her three other younger Children by the said William Penn deceas'd, namely, the plaintiffs Thomas Penn, and Richard Penn, and Dennis Penn, their late Brother (since deceased) and their Heirs and Assigns, as joint Tenants, for ever: And as to all the rest and residue that should remain of all that Tract of Land in America, late of the said William Penn her late Husband deceased, adjoining to Pensilvania aforesaid, and commonly called the three Lower Counties, and all Lands, Tenements, and Hereditaments, whatsoever, Rents and other profits, late of the said William Penn her said late Husband, in the said three Lower Counties, or in East and West Jersey, or elsewhere in America (subject also as aforesaid to the Debts of the said Testator) she did, in like manner, direct, limit and appoint that three full and equal Parts (the whole into six equal Parts to be divided) should be, by the said Trustees, conveyed to and to the Use of her said eldest Son the Plaintiff John Penn, and of his Heirs and Assigns; and, as to the remaining three sixth parts of the same, to be conveyed to the Use of her said three younger Children Thomas Penn, Richard Penn, and Dennis Penn, and their Heirs and Assigns, as joint Tenants, for ever, as by the said Deed-poll or Appointment, relation being thereunto had, may more fully and at large appear.

That the said Hannah Penn departed this Life on or about the 20th Day of December, in the Year 1726, and the said Dennis Penn her Son, departed this Life on or about the Day of in the Year , an Infant of very tender Years, and without Issue.

And that, by Indentures of Lease and Release, bearing Date, respectively, on or about the and Days of which was in the Year of our Lord the then only surviving Trustees, named in the said last Will and Testament of the said William Penn, did duly convey unto the Plaintiffs (pursuant to the Directions in the said Appointment of the said Hannah Penn) all and singular the Lands, Hereditaments and Premises in the said Appointment mentioned; to hold unto the Plaintiffs respectively for such respective Estates as by the said Appointment was directed, limited, appointed and intended; as in and by the said recited Indentures of Lease and Release had the Plaintiffs the same in this Kingdom to produce relation being thereunto respectively had, may more fully and at large appear.

That the said William Penn, in his Life-time, had put himself to so very great Expence, in improving the said Countries, that, besides selling part of his Family Estate in England and Ireland for that purpose, of an exceeding great yearly Value,

he was obliged to Mortgage, and in or about, the Year 1708 did Mortgage, his said Lands in America, to Joshua Gee, John Wood, and others, for 6,600*l.* which Mortgage lay upon the said Lands, at Interest, for above twenty Years; but, in the Year 1729, the Mortgagees, or the Survivors of them, reconveyed the said Mortgaged Premises to the Plaintiffs for the respective Estates mentioned in the said Deed of Appointment made by the Plaintiffs Mother; as by the said Mortgage, and Reconveyance, had the Plaintiffs the same now in this Kingdom to produce, relation being thereunto had, would appear.

Under which said Will, Appointment and Conveyance, Mortgage and Reconveyance, the Plaintiffs, entered into the Premises, and now are, and ever since the death of the said Hannah Penn have been, in the quiet and peaceable Possession of the said three Lower Counties, and of all the Lands, Tenements and Hereditaments therein.

That the said Hannah Penn, immediately after the decease of the said William Penn, did enter into, and from the time of the death of the said William Penn, down to the time of her own death as aforesaid, was in the quiet and peaceable Possession of the said three Lower Counties, and of all the Lands, Tenements and Hereditaments therein.

And the said William Penn, in his Life-time, and the said Hannah Penn, after his death, during her Life, and the Plaintiffs, since her death, down to this time, respectively, have, frequently, and from time to time, as occasion required, appointed Deputy or Lieutenant-Governors of the said three Lower Counties, and begun, continued, and carried on the great Improvements now in being thereon, at their own sole and prodigious Expence.

That, during the time the said Hannah Penn was so possess of the same three lower Counties as aforesaid, and during the Infancy of the Plaintiffs, the Defendant Charles Calvert Esq; commonly called Charles Lord Baltimore in the Kingdom of Ireland, the Grandson of the said Charles Lord Baltimore who petitioned her said late Majesty Queen Anne, in January 1708 and May 1709 as aforesaid, and who is, or pretends to be, the Heir at Law to the said Cecilius Baron of Baltimore, to whom the said Grant of the Province of Maryland was made in 1632, applied in his own Person, to the said Hannah Penn, and admitted to her that he had no Colour or pretence of Title to the said three Lower Counties, or to any part of them, but represented that, as the Bounds of the said Provinces of Pensilvania and Maryland had not been, by any particular and exact Land Marks, laid out and described, some of his, and likewise some of her, Tenants, upon the Borders, refused to pay their

Quit-Rents, and other inconveniences arose, both to the said Hannah Penn and Charles Lord Baltimore, and therefore, proposed that, till the Bounds could be exactly set out and described, no more lands should be granted out, by either of them near the Borders.

And, thereupon, an Agreement, in Writing, bearing Date on or before about the 17th Day of February, in the Year 1723, was duly signed and executed, by and between the said Hannah Penn and Charles Lord Baltimore, in the Words, or to the effect, following, that is to say,

Whereas there are Disputes depending between the respective Proprietors of the Provinces of Maryland and Pensilvania, touching the Limits or Boundaries of the said Provinces where they are contiguous to each other: And whereas both Parties are, at this time, sincerely inclined to enter into a Treaty, in order to take such Methods as may be adviseable for the final determining the said Controversy, by agreeing upon such Lines, or other Marks of Distinction, to be settled, as may remain for a perpetual Boundary between the two Provinces; it is therefore mutually agreed, between the Right Honourable Charles Lord Baltimore, Proprietor and Governor of Maryland, and Hannah Penn, Widow and Executrix of William Penn Esq; late Proprietor and Governor of Pensilvania, and Joshua Gee, of London, Merchant, and Henry Gouldney of London, Linnen-Draper, in behalf of themselves and the Mortgagees of the Province of Pensilvania, that, for avoiding of all manner of Contention or Differences between the Inhabitants of the said Provinces, no Person or Persons shall be disturbed or molested in their Possession, on either side nor any Lands be surveyed, taken up or granted, in either of the said Provinces near the Boundaries which have been claimed or pretended to on either side; this Agreement to continue for the space of 18 Months from the Date thereof: in which time, 'tis hoped, the Boundaries will be determined and settled. And it is mutually agreed on, by the said Parties, that Proclamations be made in the said Provinces, signifying this Agreement, for the better quieting the People; and the Lieutenant-Governors, and other proper Officers of the respective Provinces, for the time being, are directed and enjoined to conform themselves agreeable hereunto, and to issue our Proclamations accordingly, upon the Receipt hereof. In Witness whereof the Parties above-named have hereunto set their Hands this 17th Day of February 1723. Baltimore, Hannah Penn, Joshua Gee, Henry Gouldney. Witness S. Clement, Charles Lowe, James Logan.

As by the said last recited Agreement, one Original part whereof, executed as aforesaid, the Plaintiffs Charge was de-

livered to, and in the Possession of, the said present Charles Lord Baltimore, had the Plaintiffs the same to produce, relation being thereunto had, would and might fully appear.

That, in pursuance and performance, on the part of the said Hannah Penn, of the said last mentioned Agreement, a Proclamation was duly published, on or about the 15th Day of May in the Year 1724, by Sir William Keith, Bart., then Deputy-Governor under the said Hannah Penn in and over the said Province of Pensilvania, and the said three Lower Counties, reciting at full Length the same Agreement, and notifying the same to the Inhabitants under his Government, and requiring the Observation of the same Agreement.

And a like Proclamation, pursuant to the Tenor of the said Agreement, ought to have been made and published by the Governor, or Lieutenant, or Deputy-Governor of the said present Charles Lord Baltimore, and so the Plaintiffs Charge was done by the express Direction of the said present Lord Baltimore himself.

That the Matters aforesaid remanied at quiet, under the said last mentioned Agreement, not only during the 18 Months therein mentioned, but for a much longer time, in Vertue and Consequence, and under the true intent, meaning and equity of the said Agreement.

And, although the exact Marks and Bounds of the said Provinces and Colonies were not marked out under the said Agreement, which was partly occasioned by the neglect of the said Charles Lord Baltimore, and partly by the death of the said Hannah Penn, and by the Infancy of the Plaintiffs and the said Dennis Penn, or of some of them, yet, the Plaintiffs said Mother, and the Plaintiffs on their part, justly and duly observed the said Agreement; and did not grant out any Lands whatever near to the Borders.

That the said present Charles Lord Baltimore did not, on his part, observe the said Agreement, but hath and did, from the time of first entering into the said Agreement, by himself and his Governors, Commissioners, Officers, and other Servants, make many very large and extensive Warrants and Grants, of great Quantities of Lands, to sundry Persons, without specifying where, and in what Places, the same did, or were to lie, or were to be taken up; and this, as the Plaintiffs charge, with express Intent and Design that such Grantees should, under his the said present Charles Lord Baltimore's Grants, seat down upon, and take up Lands, where ever they pleased, and could find vacant Lands, thereby designing and intending to attempt to stretch, and extend, his Grants and Settlements far beyond

the true Limits and Bounds of the Grant made to the said Cecilus, to the great Wrong and Injury of the Plaintiffs.

That the said present Charles Lord Baltimore, on or about the first Day of July 1731, did, by Petition, which he presented, or caused and directed to be presented, to his present Most Gracious Majesty, pray his said Majesty to order the Proprietors of Pensilvania (meaning the Plaintiffs) forthwith to join with him in settling and ascertaining the Boundaries, and, in case they refused to comply therewith, or in case the same should not be settled and ascertained within the space of twelve Months, that then, his Majesty would please to hear the Matter in dispute, and to give such Order, and to make such Determination, touching the same, as to his Majesty in his great Wisdom should seem meet; and, to induce his Majesty to grant such the Prayer of the said last mentioned petition, the said Charles Lord Baltimore did, in and by the said last mentioned petition, set forth his own Right and Title, or pretended Right and Title, in the words following that is to say,

“That your petitioner, and his Ancestors, by Grant, under the great Seal, ever since the Year 1632, is and have been Proprietor and Proprietors of the Province of Maryland, and, among other things, entitled to all that part of a Peninsula, lying in the parts of America, between the Ocean on the East, and Chesapeake Bay on the West, and divided from the other part thereof by a right Line, drawn from the Promontory or Cape of Land called Watkin’s Point (situate in the aforesaid Bay near the River Wigheo) on the West, unto the Main Ocean on the East, and, between that Bound on the South, unto that part of Delaware Bay on the North, which lyeth under the 40th Degree of Northern Latitude from the Equinoctial, where New England ends.”

By which Description, as the Plaintiffs expressly Charge, the said present Charles Lord Baltimore did, in and by his said Petition, exclude, and did mean and intend to exclude, and not to comprize or include, the said three Lower Counties, or any part of the same.

That his Majesty, by his Order in Council of the said first Day of July 1731, was pleased to refer the said last mentioned petition to the Consideration of the Right Honourable the Lords of the Committee of his Majesty’s most Honourable privy Council for hearing Appeals and Complaints from the plantations.

And their Lordships of the said Committee, by their Order of the Day of the said Month of July 1731, were pleased to refer, again the said last mentioned Petition to the Consideration of the Right Honourable the Lords Commissioners for

Trade and Plantations: as by the said last mentioned Petition, and several Orders made thereon, relation being unto them severally and respectively had, may more fully and at large appear.

That so soon as the said present Charles Lord Baltimore had presented such his Petition to his Majesty, and obtained such Orders thereon as aforesaid, he the said present Charles Lord Baltimore, well knowing (as the Plaintiffs charge that the Truth is) that the Plaintiffs were young Men, just come of Age, and wholly and utterly unacquainted with, and Strangers to, the said old intricate Disputes in 1683, 1684, 1685, 1708, and 1709, and not born or in Being at the Times thereof, and also well knowing (as the Plaintiffs charge he did) that the Plaintiffs Father, in the great Undertaking therein beforementioned, had worn himself out, and was, for many Years during the latter Part of his Life, greatly impaired in his Mind, Body and Fortune, and that his Papers and Writings, relating to the said Old Transactions, had all been lost or mislaid, and that the Plaintiffs were in a helpless Condition in respect thereto, and intending to make to himself, by means thereof, and of the Plaintiffs Ignorance of the Premises, great and undue Advantage against the Plaintiffs, he the said present Charles Lord Baltimore did, entirely of his own Motion, apply by himself in Person to the Plaintiffs then Solicitor, and desired to have a Meeting between the Plaintiffs and Defendant, in order to settle and agree the Matters in Difference between them; the said Defendant declaring that, if they could not agree, he would set up his former Pretence to the said 3 lower Counties, or to Part thereof.

Which Desire of the Defendant being made known to the Plaintiffs, or some of them, the Plaintiffs or the said John and Thomas Penn did, upon the 20th Day of July 1731 (after several previous Meetings before had between the Plaintiffs and Defendant on the same Subject) meet and treat with the said Defendant touching an Agreement to be made between them for settling the Differences between them.

And, at that Meeting, on the said 20th Day of July 1731, the said Defendant produced, out of his own Pocket, a Map or Plan of the Peninsula herein beforementioned, and of several contiguous and adjacent Parts thereto, and, with a Rule and Pencil, did (with his own Hands) draw Lines upon the said Map or Plan so by him produced, both a-cross, and also up in near the middle Part of the said Peninsula, to denote in what Manner he insisted the Bound-Lines should be really run, and particularly so as to exclude from him, and to include to and for the Plaintiffs, the said 3 Lower Counties.

And the Defendant did, then and there, insist that his North-

ern Bounds, for Maryland in the other Parts of that Province where the 3 Lower Counties did not adjoin to that Province on the North Part, should extend Northward as far as to within 15 Miles South of the City of Philadelphia in Pensilvania; which, as the Plaintiffs charge, he himself believed and knew, and so the same in fact is true, would carry his general Northern Bounds much higher than every Part of the said Peninsula, and the Isthmus thereof, and a considerable way within the main Land and Continent itself.

And the Plaintiffs, and particularly the said John Penn and Thomas Penn, then desired and insisted that he should agree that his general Bounds should extend Northwards but only to within 20, or at most to within 18 Miles, South of the said City of Philadelphia; but the Defendant utterly refused to consent thereto.

And the Plaintiffs, and particularly the said John and Thomas Penn, on their Parts also produced a Map or Plan of the said Peninsula and Parts adjacent, and, with a Pen or Pencil, drew Lines thereon, to denote how they proposed the Bound-Lines to be run.

But the Defendant refused to recede, in any Point, how small soever, from what he had proposed.

And the Plaintiffs thereupon, after a good deal of Debate had at that Meeting of the 20th of July and the several former Meetings, did verbally agree to let the Bounds run in the manner then verbally proposed by the Defendant.

And, thereupon, another Meeting was proposed between the Plaintiffs and Defendant for the 22d of the said Month of July 1731, in order that, against such Meeting, some short Minute or Note, in Writing, might be prepared of their Agreement.

And, accordingly, the Plaintiffs, or, the said John and Thomas Penn, did, upon the said 22d of July 1731, again meet the Defendant; at which last Meeting the Defendant took out of his Pocket, and produced, and read to the Plaintiffs a Paper, of his own Hand-Writing, which, he said, was the Notes in short of what had been so propos'd and talk'd of as aforesaid, at the former Meeting two Days before (which Notes were then many times read over) and that, upon the Foot of those Notes an Agreement in Form should be drawn out, between him and all the Plaintiffs: which the Plaintiffs agreed to.

And, thereupon, the Plaintiffs, and their said then Solicitor, desired the Defendant to give to them that Paper or Proposal which had been so produced and read to them, in order to assist in drawing up the Agreement in form therefrom; which the Defendant, at first, agreed to, but, after some Time, said that he had no Copy of such Paper or Proposal, and, therefore, did

not chuse to deliver over that very Paper, or to the like Effect, but promised that he would deliver the same (and accordingly he did instantly in the Plaintiffs Presence deliver the same) to his the Defendant's Solicitor, and directed his the Defendant's Solicitor to give the Plaintiffs a Copy thereof.

And then, an Observation was made, by some Person during such last Meeting, that it would be difficult, by any Agreement, or Form of Words, how full soever, to describe the Bounds, clearly and plainly, without annexing to the Agreement, or referring therein to, some Map or Plan, to help illustrate and explain the same, which the said Defendant agreed or seemed to agree, to the Reasonableness and Fitness of doing.

And, thereupon, a Question was moved, between the Plaintiffs and Defendant, Whose Map or Plan should be affixed to the Agreement, when drawn out? And the Defendant insisted, and the Plaintiffs agreed thereto, that not the Map or Plan produced by the Plaintiffs, but that which was produced by the said Defendant himself should be affixed to the said Agreement, when drawn out.

And then, another Question was also moved, between the Plaintiffs and Defendant, What Person should engrave the Defendant's Map or Plan, in order to the affixing the same to such Agreement, when so prepared? And the Plaintiffs named one Person for the graving the same, but the Defendant named and insisted on another, different Person, namely, Mr. Senex, a Mathematician, for the engraving the Defendant's said Map or Plan for the Purpose aforesaid, and the Plaintiffs as they had before agreed to every one of the Defendant's Proposals, so they agreed to this last, likewise.

That, in 3 or 4 Days after the said last Meeting, the Defendant's Solicitor did (pursuant to such Directions given to him as aforesaid) deliver over to the Plaintiffs, or to some Person on their Behalf, a Paper as a true Copy (but very much abbreviated) of the said written Paper or Proposal which had been so produced by the Defendant at the said last Meeting.

And the material Parts of the same, being short, are in the very Words or to the Effect following, that is to say,

"1. There shall be a Circle of 12 Miles Distance drawn from "Newcastle.

"2. The Proprietors of Pensylvania shall be entitled to 15 "Miles South of Philadelphia, by a West Line drawn, from the "Point of the South and North, to the Extent of their West "Limits comprised in the Charter of Pensylvania.

"3. There shall be a Line, South, drawn from the East and "West Line aforesaid, which shall intercut the Periphery of

"the Circle of 12 Miles from Newcastle, until it intercut the
"Parallel of an East and West Line drawn from the Promon-
"tory or Cape, called Cape Hinlopen, at Rectangles.

"4. The Lord Baltimore to quit all Pretensions to the 3 lower
"Counties, known to be at present comprised within the Limits
"aforesaid, that is to say within the 12 Miles Circle of Newcastle
"and the North and South Line drawn as aforesaid on the
"West, and the Bay of Delaware on the East.

"5. The Proprietors of Pensilvania to quit all Pretensions to
"any Land on the Southward of the Line of 15 Miles from Phila-
"delphia, and to the West of the North and South Line here-
"tofore described, and, for the Considerations aforesaid, convey
"to the Lord Baltimore all Right and Title they may have
"thereunto belonging." With some other Clauses, therein con-
tained, not relating to the Bounds, but merely to the quieting
the Possessors of the Land in Dispute; as by the Original of the
Defendant's said Paper or Proposal, which the Plaintiffs charge
is now in the Custody, Possession or Power of the said Defend-
ant, or of some Sollicitor or Agent of his, and by the said Copy
thereof delivered, by the Defendant's Sollicitor, to the Plain-
tiffs, or some Person on their Behalf, Relation being thereunto
had, may plainly appear.

That, in less than three Weeks Time after the said Copy of
the said Defendant's Paper or proposal was so delivered over
as aforesaid, the plaintiffs caused a Draught of Articles of Agree-
ment, at full Length, to be prepared, in order to be, after the
same should be settled, engrossed and executed by the said par-
ties; and the Draught of such Agreement was delivered over,
by the Plaintiffs Direction, to the Defendant, or his Sollicitor,
upon or about the 16th Day of August 1731; and the same
Draught of the said Agreement at length was, for very near 9
Months, namely from the said 16th of August 1731, to the 10th
Day of May 1732, under the constant and continued Exami-
nation of the Defendant himself and of Samuel Ogle Esq; the
Defendant's Lieutenant or Deputy Governor of Maryland, and
of Mr. Wynne the said Defendant's Council, and of Mr. John
Sharpe the said Defendant's said Sollicitor, and of Mr. Senex
the Mathematician, so named as aforesaid by the said Defend-
ant, and of many other Council, Agents and Persons, employed
by and for the said Defendant.

And, during the Time the said Draught of the Agreement
was so under Consideration as aforesaid, the said Defendant,
or his said Sollicitor, did carry the said Defendant's own Map
or Plan to the said Mr. Senex, to be engraved; and he did en-
grave the same, and for which the Plaintiffs and Defendant
have jointly paid the said Mr. Senex.

And the said Mr. Senex was desired by the said Defendant to give, and did give his Opinion, in Writing, upon the Propriety and Fitness of the Terms and Expressions made use of in the said Draught of the said Agreement.

And, during the long Time that the said Draught of the said Agreement was under such Consideration, by the said Defendant and his several Agents and Friends before mentioned, the said Defendant proposed and insisted on many After-thoughts, of his own or of his Agents or Advisers, which he, likewise, insisted on, tho' never before mentioned.

And, amongst many others, the said Defendant insisted that, Whereas in his own Proposals, and in the said Draught of the Agreement, the 12 Miles Distance from Newcastle, and the 15 Miles South of Philadelphia, were only mentioned as Miles in general, they should be expressed particularly, in the said Articles of Agreement, to be 12 and 15 English Statute Miles, which the Plaintiffs agreed to, altho' they thought the same ought rather to have been Geographical Miles, which would have been more for their Benefit and Advantages.

And, again the said Defendant insisted that the Heir at Law of the Plaintiffs Father (tho' the Will of the Plaintiffs Father had been proved by Witnesses in a Court of Equity against the Heir at Law) and also, the Persons intituled under the Will of the Plaintiffs Father to 40,000 Acres of Land in America, should join in the said Agreement, or, by some Indorsement, or other Instrument, agree to and confirm the same: which the Plaintiffs readily agreed they should; and, accordingly, the said Persons afterwards did.

And, after the said Draught of the Agreement had been, from the 16th of August 1731, to the 29th of March 1732. (which was above 7 whole Months) under the Consideration of himself, and his Agents, as aforesaid, the said Defendant delivered, with his own Hand, unto the Plaintiffs, for their Sollicitor, a Note, of his own Hand-writing, the Purport of which he insisted should be, likewise, inserted in the said Draught of the said Agreement, to prohibit the People of the respective Provinces to carry on Commerce, into the Bays of Chesopeak and Delaware, by means of any Rivers leading from one of the Provinces aforesaid to the other; which the Plaintiffs, tho' with a good deal of Unwillingness, also agreed to.

And, again, the Defendant, at another subsequent Time, insisted that a Clause should be inserted in the said Draught of the Agreement, That, in case a sufficient Quorum of the Commissioners, to be named on either Side, should not, from time to time, according to the Appointments and Adjournments to be made for that purpose, attend, to proceed in the marking and

running out the Lines and Bounds aforesaid for want whereof the same could not be done within the Time limited) then, the said Agreement should be void, and then, and in such Case, the Party or Parties whose Commissioners should make such Default should forfeit and pay, to the other Party or Parties whose Commissioners should attend, upon Demand, the Sum of 5,000*l.* of lawful Money of Great-Britain: which the plaintiff, likewise, agreed to, and, accordingly, a Clause or Proviso was inserted in the said Draught for such Purpose.

And many other Alterations and Amendments were made, and inserted, by the Defendant and his Agents and Advisers, till they had made the said Draught of the said Agreement entirely agreeable to the Defendant, and, when they had so done, the said Draught was, in the Beginning of May 1732, re-delivered back again to the Plaintiffs Solicitor, to be engross'd; and six several Parts thereof were instantly engross'd, on Parchment; on the Side or Margin whereof the Defendant's said Map or plan as stamped or printed.

And all the said 6 parts of the same Agreement were upon, or about the 10th Day of May 1732, in presence of many Witnesses, duly signed, sealed and delivered by the Defendant and by the plaintiffs.

That the said original Articles of Agreement were indented and bore Date on or about the said 10th Day of May 1732, and were made between the said Defendant Charles Baron of Baltimore by the Description and Addition therein contained of the one Part, and the Plaintiffs by the Descriptions and Additions therein contained of the other Part, and recited the said Letters patent or Charter of King Charles the First of Maryland to the said Cecilius Baron of Baltimore, and the said Letters patent or Charter of King Charles the Second of Pensilvania to the Plaintiffs said late Father, and the said two herein beforementioned Indentures of Feoffment from the said Duke of York of the said 3 lower Counties of Newcastle, Kent and Sussex to the Plaintiffs said Father; and also recited, in general, that several Disputes and Differences had arose between the former Lord Baltimore and the said William Penn, touching the respective Bounds and Limits of the said Provinces of Maryland and Pensilvania, and between the said Province of Maryland and the said 3 lower Counties of Newcastle, Kent, and Sussex, but that, for the putting a final and friendly End and Accommodation to the said Disputes and Differences, the said Parties to the said Articles had come to the there following Agreement touching the same.

And the said Articles did, therefore, witness that it was thereby mutually and reciprocally covenanted, promised, de-

clared and agreed, by each and every one of the said Parties thereto, for himself and his Heirs, Executors and Administrators, to and with all and every other of the same Parties thereto, and their several and respective Heirs, Executors, and Administrators, in manner therein after mentioned, and

1st, That the Draught or Plan, printed in the Margin upon that Skin of Parchment whereon the said Articles were engrossed (which contained a Map of the Peninsula, and also of the other Tracts of Ground therein mentioned) was a true Copy of those which had been sent over from America to the then present Parties to the said Agreement by their respective Agents in those Parts, for the Assistance and Guidance of the said Parties in the settling the said Disputes, and by which that present Agreement was to be explained and understood.

2dly, That there should be the said Circle, mentioned in the said Charter for Pensilvania and Deed of Bargain and Sale or Feoffment of Newcastle (or so much thereof as was requisite) drawn and marked out, at the 12 Miles distance from the Town of Newcastle, which 12 Miles should be 12 English Statute Miles.

3dly, That a due East and West Line should be drawn, a-cross the said Peninsula, (or a-cross so much of it as should be requisite) such East and West Line to begin, on the East Park, at the Place in the said Draught or Map called Cape Hinlopen, which lay South of Cape Cornelius, upon the Eastern Side of the said Peninsula, toward the main Ocean, and, at the Point of the said Cape, and to run, towards the Western Side of the said Peninsula, which lay upon the Chesopeak Bay; but to stop, in the exact middle of that Part of the same Peninsula, when so running a due East and West Course.

4thly, That, from the Westward Point or End of the said East and West Line (which Westward Point or End should be just half way a-cross the said Peninsula) a strait Line should run, Northwards, up the said Peninsula (and above the said Peninsula if it required it) till it should so touch the Western Part of the Periphery of the said Circle as to make a tangent thereto, and, there the said strait Line should end.

5thly, That at the Northern Point or End of the said strait Line, a Line should begin, and should, from thence run, due North, above the said Peninsula; but, so far only, until it came into the same Latitude as 15 English Statute Miles due South of the most Southern Part of the City of Philadelphia.

6thly, That a due East and West Line should be run in manner following. It should begin at the Northern Point or End of the said due South and North Line, and should from thence, run due West, cross Sasquehannah River, to the utmost West-

ern Extent of the said Province of Pensilvania (or so far in Part thereof as should be at present requisite, in regard, that as the same was to be a due East and West Line the beginning Part thereof might be sufficient to continue the same by, when further Occasion should require, and when the Lands Westward in the said Provinces of Maryland and Pensilvania should be better settled, and that it would occasion a very great Expence, and likewise be at present needless, to run the same to the utmost Extent Westward of the said Province of Pensilvania, however, the same should, at present, be run across Sasquehannah River and about 25 English Statute Miles further, on the Western Side of the said River.)

7thly, That the Part of a Circle then drawn with red Ink upon the said Draught or plan, and the red Lines, also drawn thereupon, were then drawn to serve as an Explanation to that Agreement, but not with exact Certainty, in regard the said Draughts or Plans, so sent over to the Parties as aforesaid, had neither Scale or Compass to them.

8thly, That the first there abovementioned due East and West Line, to run from Cape Hinlopen to the middle of the Peninsula, and the said strait Line, to run from the Westward Point thereof, Northwards, up the said Peninsula (and above the said Peninsula if it required it) till it touched or made a Tangent to the Western Part of the said Periphery of the said 12 Miles Circle, and the said due South and North Line, to run from such Tangent till it met with the upper or more Northern East and West Line, and the said upper East and West Line, to begin from the Northern Point or End of the said South and North Line, and to run due Westward (at that Time) cross Sasquehannah River and 25 English Statute Miles at least on the Western Side of the said River, and to be 15 English Statute Miles South of the Latitude of the most Southern Part of the said City of Philadelphia, were, and should be, and should, at all times for ever thereafter, be allowed and esteemed to be, the true and exact Limits and Bounds between the said Province of Maryland, and the said three lower Counties of Newcastle, Kent and Sussex, and between the said Provinces of Maryland and Pensilvania; excepting only that, in case the said North Line from the Tangent of the Circle of Newcastle should break in upon the said Circle, in such case, so much of the said Circle as should be cut off by the said Line should belong to and be Part of the County of Newcastle.

9thly, That the said Charles Lord Baltimore and his Heirs and Assigns, on his Part, and the Plaintiffs and their several and respective Heirs and Assigns, on their Parts, should and would, by fit and proper Powers and Instruments, within 2

Calendar Months from the Day of the Date of the said Articles, authorize and appoint a sufficient Number of discreet and proper Persons, not more than 7 on each Side, to be their respective Commissioners; with full Power, to the said 7 Persons, or any 3 or more of them, for the actual running, marking and laying out the said Part of a Circle, and the said before mentioned Lines which said Commissioners should give due and proper Notice, to each other, and should fix and agree upon a Time or Times to begin and proceed in the running, marking, and laying out the same; and the same should be begun, at the farthest, some time in the Month of October then next, and should be proceeded in with all Fairness, Candour and Dispatch, that might reasonably be. And the said Lines should be mark'd out by visible Stones, Posts, Trees, Pillars, Buildings, Land-marks or other certain Boundaries, which might remain and continue; such Boundaries to be mark'd, on one Side, with the Arms of the said Charles Lord Baltimore, and, on the other side, with the Arms of the Proprietors of Pensilvania; and such Lines should be completely so run, mark'd and laid out (as far as by the said Agreement was intended) on or before the 25th Day of December 1733; and, when so done, a true and exact Plan and Survey thereof, with the best and most exact and certain Descriptions that could possibly be given of the same, should be made up and signed and sealed, by the said Commissioners on both Sides, and by their Principals, and should be entered in all the publick Offices in the said several Provinces and Counties.

Provided always, and it was thereby agreed that, in Case a sufficient Quorum of the Commissioners, to be named on either Side, should not, from time to time, according to the Appointments and Adjournments to be made for that purpose, attend to proceed in the marking and running out the Lines and Bounds aforesaid for want whereof the same could not be done within the Time before limited, then, the said Agreement, and every Article and Thing therein contained, should cease, determine and be void, and then, and in such Case, the Party or Parties, whose Commissioners should make such Default, his or their Heirs, Executors or administrators, should and would forfeit and pay, to the other Party or Parties, whose Commissioners should attend, his or their Executors or Administrators, upon Demand, the Sum of 5,000*l.* of lawful Money of Great Britain.

10thly, The said Charles Lord Baltimore, for himself and his Heirs, did, by the said Articles of Agreement, for ever, renounce, release and quit claim, unto the Plaintiffs and their Heirs, all Rights, Titles, Interest, Powers, Prerogatives, Claims, Demands

and Pretensions to the said Province of Pensilvania, and to the said 3 lower Counties of Newcastle, Kent and Sussex, to be so bounded as aforesaid (Part at least of the same 3 lower Counties being therein, said to be, then known to be comprized within the Bouds mentioned in the said Charter of Maryland) and should also, at the Request and Cost in the Law of the Plaintiffs and their Heirs, grant, convey and assure, in the most effectual Manner, the said Province of Pensilvania, and the said 3 lower Counties, to be bounded as aforesaid, and all his and their Right, Title, Interest, Powers, Claims and Demands in and to the said Province of Pensilvania, and the said 3 lower Counties, to be so bounded as aforesaid, and every Part of the same, free of all Incumbrances by the said Charles Lord Baltimore and his Ancestors, unto the Plaintiffs and their Heirs, to hold unto the Plaintiffs and their Heirs to the only Use and Behoof of them and their Heirs forever in such Manner as by the Plaintiffs or their Heirs, or their Council learned in the Law, should be reasonably devised, advised and required. And on the other hand, the Plaintiffs made the like Renunciation, unto the Defendant of the said Province of Maryland, to be so bounded as aforesaid (Part whereof, when so bounded being therein exprest to be apprehended to be comprized within the Bounds mentioned in the said Charter for Pensilvania) and covenanted to grant, convey and assure, in effectual Manner) and which the Plaintiffs hereby offer to do) the said Province of Maryland, to be so bounded as aforementioned, in the said Articles of Agreement (free of all Incumbrances by the Plaintiffs Father, Brother, Nephew, and by the Plaintiffs their Heirs, and Assigns, except as therein mentioned) unto the said Defendant and his Heirs.

And, by another clause in the said recited Articles of Agreement, it was covenanted and agreed that all the Parties thereto, and their Representatives, should, at all times thereafter, use all friendly Means and Offices, to the utmost of their Power, to assist and support that same Agreement, and the several and respective rights, Interests and Pretensions of the Parties by virtue thereof.

And the said recited Articles of Agreement, to the effect hereinbefore set forth, were, on or about the said 10th Day of May 1732, duly signed, sealed and delivered by the Defendant and by the Plaintiffs, as by one of the original Parts of the same in the Plaintiffs Custody, ready to be produced to this Honourable Court, Relation being thereunto had, may more fully and at large appear.

That the Treaty, in order to the said last recited Articles of Agreement, was entirely begun, and carried on, at the Instance

and Request of the said Charles Lord Baltimore only, and not of the Plaintiffs.

And there was not, in the said whole Agreement, any one Matter, of ever so small Value of Consequence, which the Plaintiffs had insisted on, yielded or agreed to by the Defendant: nor, on the other hand, was there any one Matter or Thing, whatsoever, which the Defendant then insisted on, but what the Plaintiffs on their Parts did agree to by the said Articles of Agreement.

And, particularly, the Plaintiffs agreed that the Defendant's general North bounds in those Parts where the said 3 lower Counties did not make his North Bounds, should not be confined (as by his Charter the Plaintiffs insist they were) to the 39th Degree compleat, or to the Beginning of the 40th Degree, and should not be confined (as by his Charter the Plaintiffs insist they were) to some Part of the Peninsula, but, should run above 40 Miles higher, or more Northward, than the 39th Degree compleat; and should run quite through the Peninsula, and above the Peninsula, and up near 15 Miles into the main Continent itself; all which was clearly, expressly and indisputably granted by the said Charter for Pensilvania, and to no Part of which the Defendant (until such Agreement, was executed as aforesaid) had the least Shadow, or Colour, of any legal Title whatever; so desirous were the Plaintiffs to begin to reap some small Benefit from their Father's, and their own, expensive Improvements of the said lower Counties, which have, hitherto, been a very great Load and Incumbrance to, and of no clear Profit to, the Plaintiffs or their said Father.

That, pursuant to the said Articles of Agreement, the Plaintiffs on their Parts, and the Defendant on his Part, did, on or about the 12th Day of May 1732, execute Commissions, of exactly the like Tenor, to 7 Commissioners of each Side, authorizing them, or any 6, 5, 4 or 3 of them, to do every thing, relating to such Lines, Limits or Bounds, which, by the therein and herein recited Articles, was agreed to be done by the Commissioners treated of in the said Articles, in order to ascertain, fix and perpetuate the same.

And the 7 Commissioners, so authorized by the Plaintiffs, were Patrick Gordon, Isaac Norris, Samuel Preston, James Logan, and Andrew Hamilton Esqrs; and James Steele and Robert Charles, Gent.

And the 7 Commissioners, so authorized by the Defendant, were Samuel Ogle, Charles Calvert, Philimon Lloyd, Michael Howard, Richard Bennet, Benjamin Tasker, and Matthew Tighlman Ward, Esqrs.

And a Clause was inserted, in each of the said respective Commission, that, in Case of the Death, Sickness or Absence from the said respective Provinces and Counties, or other unavoidable Disability, of any of the thereby appointed Commissioners; it should be lawful for the respective Deputy Governors, or Commanders in Chief, in the said respective Provinces, for the time being, to appoint so many new and other Commissioners in their stead and place: As by the said recited respective Commissions, had the Plaintiffs the same to produce, Relation being thereunto had, might and would more fully appear.

That, in a very few Days after the Execution of the said recited Articles of Agreement and respective Commissions, to wit, about the 20th Day of May 1732, the Plaintiff Thomas Penn left this Kingdom, and embarked for Pensilvania, where he soon after arrived, and has continued there to this time, and the said Thomas Penn carried over thither the said Commission executed on the Plaintiffs part, and also one part of the said original Articles of Agreement executed as aforesaid.

And the Defendant, by the same Ship in which the said Thomas Penn went, sent over to his the Defendant's own Deputy-Governor at Maryland, the said Commission executed on his part, and also one part of the said original Articles of Agreement executed as aforesaid.

And, some short time after, the said Defendant himself sailed to, and arrived, at his said Province of Maryland.

And the Plaintiffs had all imaginable Reason to hope, and expect, that the said Agreement, so entered into at the earnest Request of the said Lord Baltimore, and entirely upon his own Terms and Propositions, and so greatly for his Benefit, and for which the Plaintiffs on their part gave so full, and valuable, and real a Consideration, would have been performed and carried into Execution, with some of that Fairness, Candour and Dispatch that was so expresly covenanted and agreed to be used therein.

But, quite contrary, the Defendant combining and confederating to and with divers Persons, at present to the Plaintiffs unknown, but whose Names, when discovered, the Plaintiffs pray may be made Parties to this their Bill of Complaint, with apt Words to charge them, to take to himself, on his own part, all the Benefit which, under the said recited Articles, could possibly result to him, and, at the same time, to deprive the Plaintiffs of all Manner of Benefit which, under the said recited Articles, could possibly result to them.

He the Defendant, and, by his Direction, Advice, Consent, Privity and Knowledge, every one of his said 7 Commissioners named in his said Commission (all which said 7 Commissioners,

or their near Relations, the Plaintiffs charge were possess'd of Grant from the Defendants or his Officers under his Authority for large Tracts of Land in general, without any Specification of the Place or Places where such Tracts should be situated or taken up, and which Grants had not been then located or seated, and all which said 7 Commissioners, or their Relations, were in hopes to have laid out such their Grants upon some improved or good Lands within the said Province of Pennsylvania and the said 3 Lower Counties or some or one of them, but were prevented by the Tenor of the said Articles of Agreement) have used all imaginable Arts and Methods to frustrate and evade the said Articles of Agreement, and prevent the marking out the Lines and Bounds pursuant to the same and the true Meaning thereof.

And the Plaintiffs charge, and so the Truth is, that what has greatly contributed to induce the Defendant to fly from the said Agreement was, the Advice, Persuasion, Entreaty and Desire of the Defendant's own Commissioners, and other Persons possess'd of like Grants from the Defendant or his Officers of great Quantities of Land in no certain or particular Place, who writ, spoke, declared, promised or mentioned to the Defendant, and to some of his Officers, Agents and Servants, who acquainted him thereof, that, in Case he the Defendant would not perform, but would break, that Agreement, they themselves would raise and pay the 5000*l*. Forfeit, or the greatest, or some, part thereof; for that (as they pretended) they could not, if the Bound-Line should be run as by that Agreement was agreed, settle and locate their large Grants upon such valuable Lands as they hoped to have done by Encroachment in Case no Bounds had been agreed upon; and these Sort of Declarations were frequently and constantly made by the aforementioned Persons claiming under such Maryland Grants, to many other Persons, as well as to the Defendant and his Officers, Agents and Servants, and were the common Discourse of great Numbers of Persons in the Province of Maryland, and in Annapolis, the chief Town or City thereof; and did come to the Hearing and Knowledge of the Defendant, who, thereupon, grew desirous to oblige such his Grantees, tho' at the Expence of the Plaintiffs.

And, for that purpose, the Defendant writ and spoke to, and advised and consulted with, many Persons in Maryland, how, and in what manner, and by what means, to avoid the running and marking out the Lines in the manner and within the time which had been so solemnly and deliberately agreed on, and yet, at the same time, to avoid also, the incurring and paying the said 5000*l*. Forfeiture in the said Articles provided,

And, at length, a Method (as was apprehended) was found out for that purpose, namely, that the Commissioners of the Defendant should, by all possible means, clog and delay the said Affair, and, at last, should seem and pretend to differ in Judgment from the Pennsylvania Commissioners, in some very material Point, about the running and marking out the said Bounds, and should tenaciously and resolutely adhere to such pretended Difference in Judgment, without suffering themselves ever to seem convinced, and, thereby, spin and wear out the whole time mentioned in the said Articles for running out the said Bound-Lines.

And, accordingly, that Resolution was taken, and adhered to, between the Defendant and his own Commissioners and other Persons, and carried into Execution in manner herein after mentioned, in direct Contradiction to the Tenor and plain Meaning of the said recited Articles of Agreement.

And the Plaintiffs charge that, in pursuance of an Appointment made by Letters, which past between the Plaintiffs first-named Commissioner and the first-named Commissioner on the part of the Defendant, the first Meeting was had, by 6 of the said Commissioners on each Side, on the 6th Day of October 1732, at a Place called Newtown, in the Province of Maryland, at which first Meeting very little or no Business was done.

And, on the 7th of the same October, the same 6 Commissioners on each Side met again, for the 2d time, at Newtown; and the said Agreement, and the Commissions, on both Sides, to the Commissioners, were read; at which time the said Samuel Ogle, who was and is the Lieutenant-Governor of Maryland under the Defendant, and the first-named of the Defendant's 7 Commissioners, objected to the Validity of the Commission granted by the Plaintiffs, altho' in the very same Words (save only the Names of the Persons) with that to the Maryland Commissioners; because the Legatees of the 40,000 Acres, devised by the Will of the Plaintiffs Father, who, by a meer Endorsement, had consented to the said Articles of Agreement, without being named as Parties to the said Agreement, had not join'd in granting the Commissions to the Commissioners; and, altho' the Commissioners on the Plaintiffs part shewed to the Maryland Commissioners that the Agreement itself, executed by the Defendant, express'd that only the Plaintiffs should grant the Commissions, yet, the said Maryland Commissioners would not own themselves satisfied, but declared, and more particularly the said Samuel Ogle did, that he would advise further thereon.

And, after this Objection had been debated a considerable time, it was, at length, agreed by the said 6 Commissioners on

each Side, that the first Part of the Work directed by the Commissions to be done was relating to the Circle about Newcastle, mentioned in the 2d Article both of the said Articles of Agreement and of the said Commissions; and the Plaintiffs Commissioners declared themselves ready to proceed thereon, and acquainted the Maryland Commissioners that they the Plaintiffs Commissioners had brought Surveyors and Artists with them, for that purpose; but the said Samuel Ogle, pretending that the principal Artist, on whom he depended, was sick, desired they might not proceed further, at that time, but that, as the Maryland Commissioners should be employed in the publick Business of their Province, there should be no further Meeting until the 30th of that Month of October, the Plaintiffs Commissioners agreed (tho' unwillingly) to meet on that Day, and not before.

But the Plaintiffs said Commissioners insisted that, before they broke up, a Minute should be made, of the then present Meeting and Adjournment, and that Clerks should be appointed, to take Minutes of their whole Proceedings; and the said Samuel Ogle, and some others of the Maryland Commissioners, opposed these fair Proposals, on pretence that, as no Directions were given in the Commissions to the said Commissioners for the Employment of Clerks, he cou'd not see what power they had to appoint any?

And, notwithstanding the Plaintiffs Commissioners strongly urged the Usage and Practice, in executing all Commissions, and the Necessity of such a Method, to avoid Irregularity and Confusion, and to enable the Commissioners to give an impartial Account of their Proceedings, the said Maryland Commissioners persisted in their Refusal.

And then the Plaintiffs Commissioners desired that a Commissioner on each side might be appointed, to take the Minutes, and to interchange them; and this also, was objected to by the said Maryland Commissioners; but the Plaintiffs Commissioners insisting thereon, and that some Notice of the then present Meeting, and of their Adjournment, should be taken in Writing, the Maryland Commissioners did, at length, agree, that a short Memorandum thereof should be made, and one Commissioner on each side were directed to prepare it: which being done, and 2 Copies thereof made, the Plaintiffs Commissioners, insisted that the said Memorandum should be signed by the Commissioners, or, at least by one of the Commissioners on each side; which the said Maryland Commissioners refused to consent to: and all that the Plaintiffs Commissioners could obtain from them was, that a Copy of such Memorandum, unsigned, should be left with the Commissioners on each side, and which

contained, only, a Note of the Commissioners Meeting (and the Names of them) on the 6th and 7th of October 1732, and reading the Articles of Agreement and Commissions, and adjourning to meet at the Town of Newcastle on the 30th of October then Instant, without further Notice, in order to proceed to mark out the Circle in the said Agreement mentioned.

And, pursuant to that Adjournment, a Quorum of the Plaintiffs Commissioners, and likewise a Quorum of the Defendant's Commissioners met, at Newcastle aforesaid, on Monday the 30th of October 1732, for the third time (and continued there together till Thursday the 2d of November then next) in order to proceed (as the Plaintiffs well hoped) to mark out the Circle mentioned in the said Agreement; but the said Samuel Ogle opened the Conference, and as in the 2d Article of the said Agreement the Circle was said to be the Circle mentioned in the Charter for Pensilvania and the Deed of Feoffment from the Duke of York, he insisted it was necessary they should see that Charter and Deed of Feoffment; and this, as the Plaintiffs charge, in hopes that the same had been in Great Britain, and could not have been produced, but that the whole Winter, when the Leaves were off the Trees and the Work might be best done, might be spent in sending for the same; and the Plaintiffs Commissioners shewed that the said Agreement recited the necessary Parts of the said Charter and Deed, but the Defendant's Commissioners insisted on what they had so desired; whereupon the Plaintiffs Commissioners yielded to send up to Philadelphia for the Charter of Pensilvania and for an Exemplification of the Deed of Feoffment from the Records of New-York.

And, at a 4th Meeting of the Quorums of the said respective Commissioners on each side, at Newcastle, on the 31st of October 1732, in the Morning, the Plaintiffs Commissioners produced, to the said Maryland Commissioners, the said Deed of Charter, and Exemplification of the said Deed of Feoffment, which were compared with the Recitals in the said Agreement, and found, by the Maryland Commissioners, to agree exactly therewith; who then insisted on Copies of the descriptive Parts therein, which were drawn out, and delivered to them, and certified to be true Copies under the Hands of 2 of the Plaintiffs Commissioners.

And, then, it was proposed that the Commissioners should agree on a Place for beginning to run the 12 Miles distance, but, the Maryland Commissioners alledging they must further consider it, the Business was adjourned till 3 in the Afternoon.

And, accordingly, a 5th Meeting, by Quorums of the said respective Commissioners, was had, that same 31st of October 1732 in the Afternoon; when the Maryland Commissioners de-

clared they questioned whether, by their Commission, they had power to run the described Circle? for, as there could be no Circle without a Centre, that Centre must be first had, but that it was no where directed, by the Articles or Commission; and they conceived they had no power to make one.

To which the Plaintiffs Commissioners answered, that the Commissioners being impowered and required to execute the Agreement, they were, consequently, impowered to do all things necessary to the performance of it; and that the former Adjournment, from Newtown to Newcastle, was in order to proceed to mark out the Circle; and the Articles enjoined the Business to be begun in the Month of October, at farthest, and that they were then in the Afternoon of the last Day of October, and yet, nothing was done to any effect.

But the Maryland Commissioners declared they had begun, but that they were under a difficulty how to proceed, and which appeared such, to them, as that they must further advise on it.

And the Plaintiffs Commissioners declared themselves fully impowered to do all necessary things to the full Execution of their Commission, and desired, if the Maryland Commissioners must consider, that, to save time, the Surveyors might be sent to measure the Town.

But the Commissioners of Maryland did not consent to that, but, instead thereof, proposed that the Commissioners should walk about the Town, and view it; which was done, and an Adjournment made to the next morning.

And, in the morning on the 1st of November 1732, a 6th Meeting was had, between Quorums of the said respective Commissioners; when the said Samuel Ogle declared that the Maryland Commissioners had advised, both with Lawyers and Mathematicians, who were satisfied that, as the Centre for the Circle was not directed by the Articles or Commissions, they, the said Maryland Commissioners, had no power to make one; but that, as the Defendant was expected to arrive in Maryland, his said Commissioners thought it proper that they should apply to him, and if he would direct them to find a Centre, they would obey.

And the Plaintiffs Commissioners observed, thereon, that the Proprietors, on both parts, had absolutely concluded an Agreement, in full and clear Terms; that they had given full Powers to their Commissioners, on both sides, to execute that Agreement; and the better to enable them so to do, a printed Direction of the Work was annexed, in the Margin, both of the Articles and of the Commissions to the respective Commissioners, which was to be explanative and directive in case of any Difficulty; that the Town of Newcastle was fairly mark'd out in

that Draught, with the Central Point in the middle of it, on which, the Circle in the Draught was drawn, and that it was easy to find the Centre, as it was there pointed out.

But the said Samuel Ogle still continued to insist that he, and his Fellow-Commissioners, had no power to fix any Centre; wherefore, they must first take the further Direction of their Lord-Proprietor; and, for that end, he desired that the Commissioners might adjourn, that they might have an Opportunity so to do.

That, in the Afternoon of the same 1st of November, Quorums of the same respective Commissioners had a 7th Meeting, at which the Plaintiffs Commissioners declared that the Proposals of an Adjournment was unexpected; and desired, that Minutes might be taken of what had past; but the Commissioners on the part of Maryland insisted that all Minutes were unnecessary, further than to enter the Meetings and Adjournments; and the Plaintiffs Commissioners persisted to have Minutes taken, but in vain.

And the Maryland Commissioners then proposed to adjourn for three whole Months, from that Day, the 1st of November, to the 1st of February following, then to meet at Newcastle; which the Plaintiffs Commissioners took time to consider of till the next morning.

That, at an 8th Meeting, between Quorums of the said respective Commissioners, upon the 2nd of November, the Plaintiffs Commissioners read over, and delivered, to those of the Defendant, an Answer, in Writing, to their Proposals of such an Adjournment; wherein the Plaintiffs Commissioners insisted on their own full Power to execute the Articles, but declared expressly, that, as the Reason assigned for Adjournment was the general Expectation of the Defendant's Arrival in some short time in Maryland, whom his own Commissioners were desirous further to consult, the Plaintiffs Commissioners had so great a Regard for his Lordship, and so great an Esteem of his Honour, that, on that Consideration alone, they agreed to the Adjournment proposed, namely, the 1st of February ensuing, then to meet at the Town of Newcastle.

And, before the Commissioners then parted, the Plaintiffs Commissioners produced, and read, to the Defendant's Commissioners, the Minutes which they had taken and kept, and ask'd the Defendant's Commissioners, after those Minutes had been read, if they had any Objection to the Truth of those Minutes? In answer whereto the said Samuel Ogle said, he had nothing to say to any Minutes the Plaintiffs Commissioners should take.

And, then, the Defendant's Commissioners read a very short Minute they had prepared, to the Effect following, that, in pursuance to the former Adjournment, the Commissioners had met at Newcastle, to run the Circle, and that, Difficulties having arisen touching the same, they had adjourned to the 1st of February.

Which short Minute was objected to by the Plaintiffs Commissioners, as neither specifying what the Difficulties were, nor, on whose part, they were started.

And, then, the said Samuel Ogle produced a Paper of Notes, as taken by himself; which being read it was found to contain a Note as if the Plaintiffs Commissioners had argued that the Charter and Deed for Pensilvania and Newcastle respectively, being recited in the Agreement, the Proprietors on both parts were bound by the said Recitals, whether true or false; and the said Samuel Ogle ask'd, What the Gentlemen of Pensilvania could say to those Notes of his, containing as aforesaid?

Whereto the Plaintiffs Commissioners insisted (as the Truth was and is) that no such Words had ever been used by any of them.

And the said Samuel Ogle replied that, tho' no such Words might have been used, yet (as he apprehended) they were consequential to what had been said; and then put up his Paper, without offering any other Minute, or any Amendment to that which he had so produced, on the Objection made by the Plaintiffs Commissioners, and allowed by himself.

That, very soon after the said 2d of November 1732, to wit, about the of the same Month, the Defendant did arrive in Maryland, and continued there for 5 or 6 Months together.

During which Time, the Defendant did contrive, to and with the said Commissioners and others to the Plaintiffs unknown, how to evade, and avoid carrying the said Articles into Execution; and many Conferences were had, by the Defendant, to and with sundry of his said Commissioners, and others, in order to that end; and to consider, likewise, how to avoid forfeiting the 5000*l.* thereon: and many Proposals and Hints, for that purpose, were, during the Defendant's Stay in Maryland, and before his Arrival there, made to him, by his said Commissioners and several other Persons; and and Encouragements and Advantages were offered or promised, or stated or pretended to be so, to the Defendant, by every one of his said Commissioners, and by many other Persons, if he would consent to defeat the Execution of the said Articles; which he did, at last, consent to, and ordered, advised, directed and intimated to his Commissioners, or some of them, that they should do all in their power to avoid executing the said Articles.

That, after the Defendant's said Arrival in Maryland, and that his Commissioners had had Opportunities of consulting him, and they or some of them had actually consulted him, touching the pretended Difficulties which they had started in the Months of October and November before, Quorums of his Commissioners and of the Plaintiffs Commissioners did meet, for the 9th time, pursuant to the last Adjournment, at Newcastle, upon the 1st of February 1732, and appointed to enter on the Business next Morning.

And Quorums of the same Commissioners met for a 10th time, at the Court-House of Newcastle, upon the 2d of the said Month of February: when the said Samuel Ogle declared that the Business before the Commissioners was the Circle of 12 Mile about Newcastle, and that he had, at the former Meeting, offered some Arguments, to shew that no Centre being fixed, the Commissioners, on either side, had no power to make one, and would be glad to know what the Plaintiffs Commissioners would say to that Point.

And the Plaintiffs Commissioners, thereupon, put him in mind that, at the former Meeting, they had fully answered that Objection, and had consented to the long Adjournment he proposed, for no other Reason than to give the Commissioners for Maryland an Opportunity (they appeared very desirous of) to consult their Proprietor: who being arrived, it might reasonably be hoped that his Commissioners were come fully instructed as to the fixing a Centre.

Whereupon, that same Samuel Ogle, who had, so often before, insisted that the Defendant's Commissioners had not power so to do, and, for that very Reason had desired, and had, so long an Adjournment, during the Winter, when the Leaves were off the Trees, and the Business best to be done, declared quite the reverse, that the Defendant, having fully delegated his Power to his Commissioners, had left it to them to execute the Agreement, in such manner as they should contrive themselves by their Commission to be duly warranted to do, and that his Lordship would not interfere therein.

Which, if true, as pretended by the said Samuel Ogle, was either a wilful Refusal on the part of the Defendant's Commissioners to fix the said Centre and Circle, if they had power: or, if they had not power so to do, was a wilful breach of the said Articles on the part of the Defendant himself, who, according to the Tenor thereof, ought to have given his Commissioners power so to do, and ought to have interfered therein.

And the Plaintiffs Commissioners, thereupon, declared to the said Samuel Ogle, that this Declaration of his was no other than what might have been expected, from the former Conduct

of the Maryland Commissioners; but that the Plaintiffs Commissioners were, still, of their former Opinion, that full Power was given, to the Commissioners, to fix a Centre; and, if the Gentlemen of Maryland thought otherwise, it would be proper they should declare themselves.

And the Plaintiffs Commissioners pressing them very much to declare, explicitly, the, said Samuel Ogle said that, tho' they (meaning the Maryland Commissioners) were not yet fully satisfied they had any power by their Commission to fix a Centre, yet, he wou'd wave that Point for the present, and talk a little about the Circle; and ask'd the Plaintiffs Commissioners what they apprehended to be the Meaning of the Circle of 12 Miles about Newcastle? and said that, for his part, he thought it plain, from the Words of the Feoffment to Mr. Penn, that the said Circle could not be construed to mean a Diameter of 24 Miles; that he was pretty much a Strangers to things of that kind, but could not believe it to mean other than a Circumference of 12 Miles, or, at most, a Diameter of 12 Miles.

Whereto the Plaintiffs Commissioners answered, that such an Interpretation could never be admitted; since, as well from the Grant of Pensilvania, and the said Deed of Feoffment, as from the Construction of the Proprietors of Pensilvania and Maryland thereof, it was abundantly evident, that the Circle was to be 12 Miles distant from the Town of Newcastle.

But the Commissioners of Maryland replied, that the Words in the Agreement and Commissions, relating to the Circle, being either superfluous or contradictory to those describing it in the Deed of Feoffment, were in themselves void.

Whereto the Plaintiffs Commissioners answered, that, as the Plaintiffs had appointed them to execute the Articles agreed on between the Proprietors, which the Plaintiffs Commissioners conceived were directed in such clear and express Terms as left no room for Dispute, so the Plaintiffs said Commissioners were then fully prepared to do what their Commission enjoined them, but not to find Fault with what their Principals had concluded on; that the Principals, on both sides, had prescribed the manner of drawing and marking out the Circle, in Terms so full and plain as removed all Occasion for Doubts, by expressly agreeing that the Circle, mentioned in the Charter for Pensilvania, and Deed of Bargain and Sale, or Feoffment of Newcastle (or so much thereof as was requisite) should be drawn and mark'd out at the distance of 12 English Statute Miles from the Town of Newcastle.

And the said Maryland Commissioners proposed, that Artists should give their Opinions touching the said Circle, and then

the said Commissioners adjourned their Conference till the Afternoon.

And, in the Afternoon of the same 2d of February, Quorums of the said Commissioners met again, for the eleventh time, when the Plaintiffs Commissioners desired those for Maryland to reduce into Writing, what it was that they would have Artists consulted on? which they declined; then the Plaintiffs Commissioners found it highly necessary to insist, and did insist, that Clerks might be appointed to take Minutes, which would prevent Misunderstandings, and shew thereafter what had been transacted at the several Meetings: but the Defendants Commissioners, again, refused the same, and alledged there was no manner of Occasion therefore.

Hereupon the Plaintiffs Commissioners urged that the Objections to the Dimensions of the Circle should be stated in Writing; but the said Samuel Ogle persisted, that it was needless, he declaring that the Question was plainly thus, what was meant by the Circle mentioned in the Deed of Feoffment?

The Plaintiffs Commissioners thereupon observed, that the Question was not truly stated: for that the Direction, in the Commissions, was to run the Circle mentioned in the Charter for Pensilvania, and Deed of Feoffment, but not that in the Feoffment only; and therefore, if they were to be recurred to, at all, the Deed and Charter should both be taken together; but that they conceived there was not the least reason, or occasion, to look further than their respective Commissions.

However, at last, the said Samuel Ogle gave in his Question, in the following Words, What Circle is understood by these Words, viz: Enfeoff and Confirm, unto the said William Penn, his Heirs and Assigns for ever, all that the Town of Newcastle, otherwise called Delaware, and all that Tract of Land, lying within the Compass or Circle of 12 Miles about the same? Upon which the Commissioners parted, and agreed to meet in the Morning of the next Day (some naming 10 others 11, of the Clock for such Meeting) and to bring Artists on both sides, to hear Opinions touching the Circle.

And the Paintiffs expressly charge that a Quorum of the Plaintiffs Commissioners, particularly, the said Isaac Norris, Samuel Preston, and James Steele by name, did, in the Morning of the next Day, being the 3d of February 1732, about 11 of the Clock, meet, for the 12th time, a Quorum of the Defendant's Commissioners, in the said Court-house at Newcastle, pursuant to the last Adjournment, and, as the Plaintiffs Commissioners plainly perceived the Drift of the Defendant's Commissioners, who had repeatedly refused to admit Clerks to take Minutes of the Proceedings, and to admit a Commissioner on each side to take

Minutes of the Proceedings, and had before taken private Notes, which (either by Accident, or Design) were false and untrue Notes or Minutes of what had past, so, the Plaintiffs Commissioners apprehended they could not be too careful to prevent more Mistakes: and, therefore, as the said Defendant's Commissioners seemed to insist so much on their Doubt about the Dimensions of the said Circle, some others of the Plaintiffs Commissioners (besides those three who were at the Court-house) were preparing, in a House nearly contiguous to the same Court House, the answer and Observations, in Writing, of the Plaintiffs Commissioners touching the said Circle, to be delivered to the said Maryland Commissioners in Writing, so as not to be liable to Wilful, or Accidental, Misrepresentation; and, as such Answer and Observations were long, and it was necessary to keep a Copy of what should be so delivered, it took up some time to copy the same.

And the Plaintiffs further charge that, during a part of that time wherein the said Observations of the Plaintiffs Commissioners were so Copying or Transcribing, the said Isaac Norris, Samuel Preston, and James Steele did meet, and were met, as aforesaid, pursuant to the last Adjournment, and were in Company with a Quorum of the Commissioners of the said Lord Baltimore, in the said Court-house; but the rest of the Plaintiffs Commissioners, who were Transcribing the said Observations, wanting a Paper, which the said James Steele had, sent to him, to the Room where the Commissioners on both sides were met and in Company together as aforesaid, for such Paper; and the said James Steele, thereupon, went for the said Paper to his House or Lodging, not Yards distant from the said Court House; and, at the same time the said James Steele went for the said Paper, the said Isaac Norris stepped out of the Room where the Commissioners on both sides were met, and desired the said James Steele to hasten in the other Commissioners, who were to bring in the said Observations; and the said Isaac Norris immediately returned again into the Room where the said Samuel Preston and the Commissioners for Maryland were; and, in a few Minutes after, the said James Steele and two others of the Plaintiffs Commissioners going up, to meet their Brethren and the said Commissioners for Maryland in the said Court-house, met the said Isaac Norris and Samuel Preston, in regard to the said Samuel Ogle (for whom and his Brother Commissioners of Maryland the Plaintiffs Commissioners had, at many former Meetings, as the Plaintiffs Charge, and, particularly, but the Day before, waited an Hour or two, or more, after the time of Appointment and Adjournment before a Quorum of such Maryland Commissioners came) had taken the Advant-

age of that short Interval of Time in which the said James Steele was called out of the Room as aforesaid, and he the said Samuel Ogle and his Brother Commissioners for Maryland had departed from the said Meeting Place, and retired to their Lodgings, in the said Town of Newcastle; and, at the time the said Samuel Ogle and the other Commissioners for Maryland pretended to leave the said Place of Meeting, it then wanted near half an Hour of 12 of the Clock at Noon, of the same 3d of February 1732.

And the Plaintiffs Commissioners then present with the said Maryland Commissioners, and particularly the said Samuel Preston, intreated the said Samuel Ogle and his Brother Commissioners to tarry a little, but to no Effect.

And the Plaintiffs further charge that, instantly, and immediately after the said Samuel Ogle and his Brother Commissioners of Maryland had so departed as aforesaid, one of the Plaintiffs Commissioners, in the Presence of several Persons, waited on the said Samuel Ogle and three others of the Defendant's said Commissioners, and acquainted them of the Surprize their Departure had occasioned; that if the said Lord Baltimore's Commissioners pretended there had been any delay, the Plaintiffs Commissioners were then ready to meet them, and that a good deal of Business might, still, be transacted even before Dinner; and that the Maryland Commissioners could not but know that, on the then next Day before, the Plaintiffs Commissioners had waited for the said Maryland Commissioners a full Hour after the time adjourned to on the day before.

But the said Samuel Ogle declared he could not think of meeting the Plaintiffs Commissioners till he should advise of the Matter, and that if, by any Failure in meeting, the Defendant had gained any Advantage, he should think himself to blame in giving it up.

And the Plaintiffs Commissioners again pressed the Meeting, but the said Maryland Commissioners refused it.

And the Plaintiffs further Charge that, upon the same 3d of February 1732 (pursuant to an Appointment made the Night before) the Plaintiffs Commissioners and the Defendant's Commissioners dined together, in the same Town of Newcastle; and, as soon as Dinner was over, on the same Day, a full Quorum of the Plaintiffs Commissioners waited on a full Quorum of the Defendant's Commissioners, namely, on the said Samuel Ogle and Charles Calvert, and on Edward Jennings, Esq; (who had before been appointed by the Defendant as one of his Commissioners, in the room of another of his Commissioners pretended to be sick) at their Lodgings, at the House of William Bottel, Inn-keeper, at Newcastle aforesaid; and, then and there, the

Plaintiffs Commissioners declared they had put their Thoughts in writing upon the Objection started the last Night by the Maryland Commissioners, and, at the same time, delivered a Copy thereof into the Hands of the said Samuel Ogle, who took and looked over some Parts of the said Writing; and, thereby, the Plaintiffs Commissioners (5 of whom had signed the same Writing) had answered the Objections made by the said Maryland Commissioners; and the Plaintiffs Commissioners did also, thereby, declare themselves, to be ready, and offered themselves, to proceed to the drawing and marking out the said Circle; and the Plaintiffs Commissioners desired the said Samuel Ogle and his Brother Commissioners to meet the Plaintiffs Commissioners, in the said Court-house, or such other Place as they pleased.

But the said Samuel Ogle declared, he did not look upon himself to be obliged to appoint any other Meeting; that if any Advantage had arisen to his Constituent he could not answer it to the Defendant, or to himself, not to lay hold of it, and the said Samuel Ogle refused to appoint any Meeting.

Whereupon the Plaintiffs Commissioners, instantly on the same 3d of February, served the said Samuel Ogle and Charles Calvert with a written Notice, or Summons, under the Hands of 4 of the Plaintiffs Commissioners, to meet, that same Evening, at 6 of the Clock, in the said Court-house, and the Plaintiffs Commissioners, likewise, gave notice of the said Summons to three other Commissioners of Maryland, then at Newcastle; but the said Samuel Ogle refused to take the said Notice or Summons into his Hands; whereupon he was acquainted of the Contents thereof, and the same Notice or Summons (after being tendered to, and refused by, him) was, in his Presence, laid down upon a Chair near him.

And the Plaintiffs Charge that, at 6 o'Clock that same Evening, being still the 3d of February 1732, and from 6 o'Clock till past 8 of the Clock the same Evening, the Plaintiffs Commissioners did meet and wait, in the said Court-house, pursuant to the said written Notice or Summons, but no one of the said Maryland Commissioners did come, or send, there, during all that Time, altho' 5 of the said Maryland Commissioners were then in the said Town of Newcastle.

And the Plaintiffs further Charge that the Plaintiffs Commissioners, being determined to leave the Defendant's Commissioners without Excuse, did, that same Evening of the 3d of February 1732, about 9 o'Clock, personally serve a Quorum of the said Maryland Commissioners, namely, the said Charles Calvert, Benjamin Tasker, and Edmund Jennings, with a written Notice, signed by 4 of the Plaintiffs Commissioners, to proceed on the

said Commissions upon the Monday Morning then next, being the 5th of February 1732, at the said Court-house, at 10 of the Clock in the Forenoon; and a Copy of the said last mentioned Notice was also left at the Lodgings of the said Michael Howard, a 4th of the said Maryland Commissioners, and which Notice afterwards came to his Hands; and another, or 5th Copy of the same, was endeavoured to be served on the said Samuel Ogle: but a Message being sent in to him, and he acquainted thereof, he refused to be seen or to be served therewith, saying, that it was an unseasonable Time, and he would receive no Messages; altho', as the Plaintiffs charge, it was then but a little after 9 at Night, and he was then playing at Tables with the said Michael Howard.

And the Plaintiffs Charge that the Plaintiffs Commissioners met, and were, at the said Court-house, on Monday the 5th of February 1732, pursuant to the said last Notice, and stayed there a considerable time, and afterwards stayed in the said Town of Newcastle that whole Day, and great part of the next; but found (as the Truth was and is) that every one of the Defendant's Commissioners had, on the Sunday before, gone out of the Town, and returned to Maryland, without any the least Notice to the Plaintiffs Commissioners of such their Intention so to do.

And the Plaintiffs further Charge that, when the Defendant's said Commissioners returned to Maryland, the Defendant was then in Maryland, and was acquainted with their Behaviour as aforesaid, or with so much thereof as they thought proper to acquaint him of; whereupon, on the 15th of the same February, he the Defendant writ and signed a Letter to the said Patrick Gordon, pretending that, at other former Meetings, the Commissioners had accustomed to meet at 10 of the Clock in a Morning, and that tho' the Plaintiffs Commissioners had met, on Saturday the 3d of the said Month of February, yet, that one of the Plaintiffs Commissioners (meaning the said James Steele, who was sent to for a Paper as aforesaid) had left the Company at the very Instant his the Defendant's Commissioners desired to proceed on Business; which the Defendant therein magnifies to the greatest Degree, but took no manner of Notice of the many verbal Notices and Requests, and of the two different, and subsequent, written Notices, given by the Plaintiffs Commissioners to the Defendant's Commissioners, on the same 3d of February. And the Defendant writ, in his said Letter, that, were he inclineable to make the strict Use of that Failure, he might not only disregard any further Notice, but intitle himself, immediately, to the Forfeiture, but that he thought himself happy in being then in his Province, that he might do,

what perhaps his Commissioners could not, which was, to recede from the Advantage he might claim; wherefore, he was willing, and thereby offered, and had accordingly given Directions to his Commissioners, to meet the Plaintiffs Commissioners, at the Town of Joppa in Maryland, on the first Monday in May.

And the Plaintiffs Charge, that he the Defendant neither had Power to appoint any Meeting (his whole Power being given to his Commissioners) nor did intend that the Commissioners should meet there, which would be a very vain thing too, as the first Point to be fixed was the Center in Newcastle Town whereas, upon enquiry, Joppa was discovered to be very near 70 Miles from Newcastle, and a Village of a very few Cottages in it, without Houses and other reasonable and fitting Accommodations, either for Gentlemen, or their Cattle: but the Plaintiffs charge that the said Defendant writ that Letter, and pretended thereby to relax his Right, out of a Consciousness that his own Commissioners had not proceeded with that fairness, candour, and dispatch which he had covenanted by his Articles they should use, and with a View to accept of Notice from the Plaintiffs Commissioners, and to revive the Meetings of the Commissioners again, lest he himself (and not the Plaintiffs) should forfeit the said 5000*l*.

And the Plaintiffs further Charge that, at the very time of the said Defendant's writing the said Letter, himself had declared, to several Persons, that his Commissioners should meet again, merely to prevent his own incurring the said Forfeiture, or to some such or the like effect.

And the Plaintiffs further Charge that, after so many wilful and obstinate Failures on the Part of the Commissioner of the Defendant, all the Commissioners on the Plaintiffs part, in order to leave the said Defendant (who was then in Maryland) without the least Shadow of Excuse, did, on the 28th of March 1733, sign a Notice to his Lordship's Commissioners, recapitulating the Proceedings of the said 3d of February, and declaring, that the Plaintiffs Commissioners would attend, at Newcastle (which was therein truly mention'd to have been, by the joint Consent of the Commissioners on both sides, acknowledged to be the only proper Place for beginning the business then immediately before the Commissioners) on the 16th of April then next, which Notice was personally served on six of the Defendants Commissioners in Maryland: in return whereto the Defendant's Commissioners sent (by the Messenger of the Plaintiffs Commissioners) a cross Notice, to meet at Joppa on the 7th of May —.

And the Plaintiffs Charge that their Commissioners, or a Quorum of them, repaired to Newcastle, and attended there the whole Day of the 16th of April 1732, pursuant to their own Notice, but no one of the Commissioners for Maryland appeared, or was then there.

And the Plaintiffs Charge that five of the Plaintiffs Commissioners went to Joppa, at great Inconvenience, and met a Quorum of the said Maryland Commissioners, on the said 7th of May 1733, and the said Samuel Ogle said that, what had past at there last Meeting, at Newcastle, was about the Circle, and that the Commissioners, were now met to treat on that Subject, and learn each other's Sentiments on it; and he ask'd the Plaintiffs Commissioners, whether they would run any other Circle than one at 12 Miles distance from Newcastle?

And it was insisted on, by the Plaintiffs Commissioners, and at length granted by those for Maryland, that the Question should be put into Writing; which was done, and was delivered (signed by one of the Commissioners for Maryland.)

To which the Plaintiffs Commissioners returned a written Answer, signed by one of their Number, stating the very Words of the said Articles of Agreement, relating to the said Circle, and returning for Answer to the said Question, that the Plaintiffs Commissioners were ready, and offered themselves, to run out the said Circle, according to the said Articles of Agreement, and did not conceive they were directed to run any other Circle than the said Circle mentioned in the said Articles.

Whereupon, the said Samuel Ogle said he, and his Brethren, would take time to consider, and the Commissioners adjourned till next Morning.

And on the 8th of May, Quorums of the said respective Commissioners being again met, at Joppa, the said Samuel Ogle said, he did not perfectly understand the said Answer, and that his and the Plaintiffs Commissioners Sentiments, about the Circle, seemed to differ much.

To which the Plaintiffs Commissioners answered, that the Directions, in the Articles of Agreement, were so exceedingly plain, that they could not be easily mistaken.

And the said Maryland Commissioners insisted, that the Circle, in the Deed of Bargain and Sale or Feoffment of Newcastle, was the Circle directed to be run; and that, by the said Deed, it was evident the same was not a Circle of 24 Miles Diameter, and, therefore they insisted (most surprizingly) that the Directions, in the Articles, to run the same at the distance of 12 Miles from Newcastle, were repugnant to that Deed, and void in themselves.

And they, being asked what they conceived to be the Dimensions of the Circle mentioned in the said Deed? answered, that it could mean no other than a Circle whose Circumference was 12 Miles.

And the Plaintiffs Commissioners answered, and shewed, that, as well in the Charter for Pensilvania, as in the two several Deeds from the Duke of York, the Circle was plainly described to be a Circle of 12 Miles distance from Newcastle, and that so King Charles the Second, and the Duke of York, understood it; and they, the Plaintiffs Commissioners, conceived the common Acceptation of the Words in the Deed would construe them, and that, admitting the least Doubt could be raised on it, yet, the Proprietors, on both sides, having an absolute Right to determine it, they had fully settled, that Point, by directing the same to be run at the distance of 12 Miles from Newcastle.

And the Defendant's Commissioners replied, that they could not believe it was the intention of the Proprietors to deviate from the Description of the Circle mentioned in the Deed of Feoffment.

To which the Plaintiffs Commissioners again answered, that the Article was no deviation from it, for that Circle having been always understood to be a Circle of 12 Miles Radius, the Proprietors had accordingly declared it to be of that Dimension; and that it was very difficult to account why the Commissioners should take upon themselves, to find fault with what the Proprietors on each side had done, or pretend to understand the same better than those who, being so deeply interested in the Affair, had undoubtedly well considered it.

To which the said Samuel Ogle said that, the Persons employed in drawing up the Agreement were to blame, and that many an honest Gentleman, trusting too much to others, had been led into Mistakes; and that he must believe the Proprietors never intended to have any other Circle run than that mentioned in the Deed of Feoffment, (whereas as the Plaintiffs expressly Charge, the Defendant himself, in his own written Proposal, previous to the said Articles of Agreement had, twice over, plainly exprest that the Circle should be 12 Miles distant from Newcastle, and so it had always been understood by himself, and others, concerned in the Transaction, previous to the settling the said Articles of Agreement.)

And, then, the said Samuel Ogle, leaving this first Matter thus undetermined, and which was to govern the whole Work, proposed that the Plaintiffs Commissioners should proceed to Cape Henlopen, at the bottom or South part of all the said three lower Counties and try if they could not better agree

on the Execution of that Part of the Articles which directed a Line to be drawn from thence a-cross the Peninsula; whereupon on the same 8th of May 1733, five of the Plaintiffs Commissioners drew out, and signed, and delivered to the Defendant's Commissioners a Request, in Writing, (dated at Joppa the said 8th of May) to join in drawing and marking out the said Circle, at the distance of 12 Miles from the said Town of Newcastle, as by the said Articles was agreed and directed, and, then, to proceed to the running and marking out the other Lines in the said Articles directed and agreed to be run, as in that Agreement was directed; and that, if the Defendant's Commissioners refused so to do, that they would satisfy the Plaintiffs said Commissioners why they would not?

And, on the same 8th of May, four of the Defendant's Commissioners signed, and delivered, a Writing to the Plaintiffs Commissioners, insisting that the Agreement meant no other Circle than that mentioned in the Deed of Feoffment; which Circle, they said, they had not refused to mark out, but desired the Plaintiffs Commissioners to agree with them in the drawing it out. And, then, the Commissioners adjourned till the Afternoon of the same Day.

That, on the Afternoon of the same 8th Day of the same Month of May 1733, the Commissioners, on both sides, being met, the Commissioners of Maryland, lest their last Paper should have given up the Point so long and unreasonably contested by them, delivered to the Plaintiffs Commissioners another written, or signed Offer and Proposal to run out a Circle; and, therein, they precisely mention it to be a Circle, whose Circumference should be 12 Miles about Newcastle.

Which Paper the Plaintiffs Commissioners answered, the same Day, in Writing; insisting that that was not the Circle they were directed to run by the said Articles, but that the Circle they were to run was one whose Radius (not Circumference) was 12 Miles; which Circle, only, the Plaintiffs Commissioners declared they conceived themselves warranted to run, and offered to do; and an Adjournment being then proposed, by the said Samuel Ogle, who pretended to have Engagements to wait on his Proprietor on a Visit to the Governor of New-York, the Plaintiffs Commissioners, (after Expostulating with the Defendant's Commissioners for dragging them to Joppa, a Place at great distance from the Business, and destitute of Accommodations, and Necessaries, and then doing nothing but repeating their former repeatedly answered Objections, and moving, presently, to adjourn (did agree to adjourn, but the Night was so far spent in Debate, that a Minute of Adjournment could not, that Night, be settled.

But, upon the next Day, being the 9th Day of the Month of May 1733, the Commissioners, on both sides, met, and a Minute of Adjournment was agreed to, for meeting at Philadelphia on the 21st of May then Instant: under a Proviso, that if the Maryland Commissioners could not return from Burlington, so as to meet on that Day, then, the next meeting was to be at Philadelphia, but upon such other Day (before the Maryland Commissioners return into Maryland) as the Maryland Commissioners should appoint: and under another Proviso, that the Maryland Commissioners should not be stayed, above one Day, from returning home: and that the next Adjournment should be, into Newcastle County, for the 18th Day of June then following.

Which Adjournment was requested by, and agreed to for the Convenience of, the said Maryland Commissioners, and them only.

But the said Maryland Commissioners, not returning so soon from Burlington as the 21st of the said May, sent to the Plaintiffs Commissioners a Notice, of the 25th of the said May, to meet them, the then next Day, at Philadelphia.

And, accordingly, on the 26th of May 1733, the Commissioners, on both sides, met, at Philadelphia, and, then, the Maryland Commissioners pretended, that their Proprietor intended to return very soon to England, and that some of his Commissioners were to attend him to Virginia, and, therefore, that the next Adjournment, which was to have been for the 18th of June, would be extremely Inconvenient, to them: whereupon so candid were the Plaintiffs Commissioners through the whole Proceeding, that they agreed to adjourn to the 3d of September then next, and a Minute of Adjournment was made, to meet then at Newcastle.

That, in the Morning of the 3d of September 1733, Quorums of the said Commissioners, on each side, met at Newcastle, and the Plaintiffs Commissioners proposed to proceed, but the said Maryland Commissioners desired that what was proposed should be reduced into Writing, and then adjourned till the Afternoon.

And the Commissioners, on both sides, met again in the Afternoon of the same Day, when the Plaintiffs Commissioners delivered to those for Maryland, a Paper, in Writing, acquainting them that they the Plaintiffs Commissioners were ready with their Artists to proceed, immediately, to run out the Circle mentioned in the said Charter and Deed, at the distance of 12 Miles from Newcastle: and mentioned in the said Paper that, as a great part of the time appointed for executing the said Articles was then elapsed without any Progress made, therefore the Plaintiffs Commissioners earnestly desired and preest the Commissioners of Maryland to join with them in the said Work,

that no more time might be lost; and, then, the said Commissioners adjourned till next Day.

And, upon the 4th of September 1733, the Commissioners, on both sides, met again, and the said Maryland Commissioners delivered to the Plaintiffs Commissioners a Paper, in Writing, again insisting that the Circle, to be run, was (as they said they were informed and convinced by Mathematicians) no other than a Circle whose Circumference or Periphery was 12 Miles, and whose Diameter was somewhat less than four Miles, and, that Circle, the said Maryland Commissioners did thereby declare themselves ready to proceed to run and mark out.

Whereupon the Plaintiffs Commissioners desired to see that Opinion of Mathematicians, which the said Maryland Commissioners pretended to be so convinced by, and had a short Query and Answer delivered to them, with the Names of Hugh Jones and William Ramsey, thereunder, upon the Words of the said Deed of Feoffment only, that they understood the Term Circle, in the said Feoffment, to mean a Circumference or Area, and, as there exprest, to be limited to a Circumference or Periphery, there called Compass about, the Diameter of which Circle, or Compass about, was (as they apprehended) somewhat less than four Miles; which the Plaintiffs charge was not a fair Question put to the said two Persons, neither were they indifferent Persons, but Dependants on the Defendant, and the Plaintiffs Commissioners made some verbal Remarks thereon, and, then, the Commissioners adjourned till the Afternoon.

And, in the Afternoon of the same 4th of September 1733, the Commissioners being again met, the Plaintiffs Commissioners delivered, to those for Maryland, a written Paper, containing their Reasons why this Question did not fall under the Cognizance of Mathematicians, as such, and, then, the Commissioners adjourned till next Morning.

And, upon the 5th of September 1733 in the Morning, the Commissioners being again met, those for Maryland returned their Answer, in Writing that they were not satisfied with the Reasons offered by the Plaintiffs Commissioners, but insisted on their own former Opinion as to the Circle, and, then, the Commissioners adjourned till the Afternoon.

At which time they met, and, after further Discourse, adjourned to the next Morning.

And, upon the 6th of September 1733, the Commissioners on both sides met again, at which time the Plaintiffs Commissioners delivered a signed written Paper, insisting on the Circle as they had before insisted, and requested the Maryland Commissioners either to join in running such a Circle, or directly to declare they would not.

And the Maryland Commissioners delivered a Question in Writing, to the Plaintiffs Commissioners, desiring to know whether they would not consent to run out any Circle, but one whose Radius was 12 Miles?

And the Commissioners separated, for a short time, and then met again, the Maryland Commissioners delivered to the Plaintiffs Commissioners a written Answer, that they would not agree or join to run or mark out a Circle at the distance of 12 English Statute Miles from the Town of Newcastle.

And the Plaintiffs Commissioners, on their Parts, delivered in their Answer in Writing, that they could not agree to run any other than a Circle at the distance of 12 Miles from Newcastle.

And then, the Commissioners for Maryland proposed an Adjournment, the Minute for which was to be brought in by each side at their Meeting that Afternoon.

And, accordingly, the Commissioners on both sides did meet that same Afternoon, and after much Debate, a Minute of Adjournment, to meet at Newcastle on the 14th of November then next, was signed.

That the Commissioners on both sides, or sufficient Quorums of them, did meet, at Newcastle, on the said 14th of November 1733, and on the 15th and 16th of the same Month, and continued to meet, debate and adjourn during those three last mentioned Days and the Commissioners on each side appearing fixed in their former Sentiments, respectively, the Commissioners for, Maryland, thereupon, frequently declared, that, as the Plaintiffs Commissioners would not join with them in running the Circle they contended for, it was to no purpose to continue any longer together, and therefore proposed that the Commissioners should depart, without Adjournment.

But the Plaintiffs Commissioners refused to agree thereto.

And, then, the Commissioners for Maryland delivered a Writing, whereby they proposed and offered to the Plaintiffs Commissioners to proceed to Cape Hinlopen, in order to proceed in fixing the Cape, and running the East and West Line directed by the third Article of the Agreement to be run from thence, and, then, adjourned to the next Day.

And, on the 17th of November 1733, the Commissioners on both sides met again, and the Plaintiffs Commissioners delivered to those for Maryland a written Paper, recapitulating many parts of the Conduct and Behaviour of the said Maryland Commissioners from the first meeting, and giving the Reasons why the Plaintiffs Commissioners could not proceed to other Business and Lines (which were to be directed and governed by the Circle) until the Circle itself was fixed as directed in the said

Articles; and, then, the Commissioners adjourned till the 19th of November.

And, on the 19th of November 1733, the Commissioners met again on both sides, and the said Maryland Commissioners delivered a long Answer, in writing, tending to excuse, or palliate, their Conduct and Behaviour, and with Remarks that no Minutes, taken, mentioned many Facts which had really past, and which the Plaintiffs Commissioners had insisted on in their last Paper (whereas that was one of the Complaints made by the Plaintiffs Commissioners, that those for Maryland had refused to let any Clerk, or even two Commissioners, one on each side, take Minutes) and concluded the same with an express Declaration that, in their Opinion, no other Consequence could arise from the Differences in Judgment between them, and the Plaintiffs Commissioners, and the Plaintiffs Commissioners refusal to proceed to Capt Hinlopen, than that, either the said Commissioners should continue at Newcastle until the 25th of December 1733, without running the Circle, or, depart from Newcastle without further Adjournment: the which they left to the Consideration of the Plaintiffs Commissioners, and, then, the Commissioners adjourned till the next Day.

And, on the 20th of November 1733, the Commissioners on both sides met again, and adjourned to the next Day after.

And, on the 21st of November 1733, the Commissioners on both sides again met, and the Plaintiffs Commissioners delivered to those for Maryland, a written Paper of Observations and Arguments upon many parts of the Proceedings and Papers, and the Commissioners adjourned to the next Day.

And, on the 22d of November 1733, the Commissioners met on both sides again, and those for Maryland delivered to the Plaintiffs Commissioners another long Paper, and the Commissioners adjourned till the next Day.

And, on the 23d of November 1733, the Commissioners on both sides met again, and the Plaintiffs Commissioners delivered to those for Maryland the Answer, to the last Paper, and then, the Commissioners for Maryland proposed that, since the Commissioners had continued so long together in exchanging of Papers, to no manner of purpose, being still as far from agreeing as ever, they should then depart.

Whereupon, it was agreed that a Minute should, by mutual consent, be prepared against the next Day, to which time the Commissioners adjourned.

And, upon the 24th of November 1733, the Commissioners met for the last time, and signed a Minute; which recited the said Articles of Agreement, and the Original Commission granted by the Defendant to his Commissioners, and the Original Com-

mission granted by the Plaintiffs to their Commissioners, and reciting the Meeting between the Commissioners on the 6th of October 1732 and other subsequent Meetings; and reciting several subsequent Appointments of some particular Commissioners for Maryland, in Place of others who were sick or dead or could not attend; and that since the Meetings at Newcastle, divers Appointments and Adjournments had been made, and sundry Propositions and Debates at their several Meetings had passed, and that five Commissioners on each side had met at Newcastle on the 14th of November then Instant, where, resuming their former Debates, and making divers Propositions to each other from the said 14th to that present 24th of November, each side continued to persist in their former Opinion, that is (as is expressed in the said Minute) the Commissioners on the part of Pensilvania insisted, as they always had done, in running and marking out a Circle (or so much thereof as should be requisite) at the distance of 12 English Statute Miles from the Town of Newcastle, as in the second Article of Agreement is directed, as the only Circle they conceived themselves impowered to run; and that the Commissioners for Maryland, on their part, insisted, as at former Meetings they had done, upon running a Circle (or so much thereof as should be requisite) whose Periphery or Circumstances is 12 Miles only, or whose Diameter is somewhat less than 4 Miles, as the only Circle meant in the Deed of Bargain and Sale and Deed of Feoffment for Newcastle, and as the only Circle intended by the Proprietors in the said Articles; which Circle the Commissioners of Maryland conceived themselves only impowered to run; and that, under that difference of Judgment, the Commissioners of Pensilvania having refused to proceed to Cape Hinlopen, in order to fix the Cape and run the East and West Line, because, they said, for the Reasons by them assigned, it could be to no manner of purpose. The Commissioners of Maryland were of Opinion that, no other Consequence would arise, than, either that the Commissioners should continue at Newcastle, until the said 25th of December next, without running the said Circle about Newcastle; or, depart from Newcastle without further adjournment; and, as the last 11 Days, since the 14th then Instant inclusive, had passed in Debates that had not in the least tended to any nearer Agreement between the Commissioners, and the time limited for executing the said Articles was then so near expiring that, even with the utmost Industry and Application, it would, scarce, by any means, be found practicable to run and mark out and fix all the several Lines in the Articles agreed and required to be done. Therefore upon the whole, the Commissioners, on

both sides, under those Circumstances, did thereby agree that it could not answer any of the Purposes intended by the said Articles to continue longer together, and that they, therefore, thought it proper to depart, without further adjournment, and leave the Conduct of the Commissioners, on both sides, and their Endeavours, used towards the execution of the said Articles of Agreement, to the Justice and Wisdom of their Superiors.

As by the said parting Minute, which is dated the 24th of the said Month of November 1733, and the said other Papers, Proposals and Writings, interchanged between the said Commissioners, had the Plaintiffs the same to produce, relation being thereunto had respectively, might and would more fully and at large appear.

And thus, as the Plaintiffs Charge, the Meetings, between the Commissioners on both sides, were put an end to, and thereby the Circle, Lines and Bound-marks were not run, markt, or laid out by the 25th of December 1733, within the time covenanted and agreed by the said recited Articles for the doing thereof, nor are yet run and markt out.

But the Plaintiffs expressly charge and insist, that the not running and marking out the said Lines, within the time aforesaid, was in no sort occasioned by the Non-attendance of the Plaintiffs Commissioners from time to time pursuant to the Adjournments made, or, from any Default whatever on the part of the Plaintiffs, or of their Commissioners, but purely and simply from a difference in Opinion between the Commissioners on each side (as those for Maryland pretended) namely, whether the Commissioners were to mark out the Circle at 12 Miles distance from Newcastle (as the Articles and the Commissions most plainly, positively and expressly mentioned they were) or, at less than two Miles distant therefrom?

But, notwithstanding such difference, or pretended difference, in Opinion, the Said Articles of the 10th of May 1732 did, and do now, subsist in full Force and Vertue.

And the Plaintiffs further charge that the said pretended difference of Opinion of the Maryland Commissioners, from that of the Plaintiffs Commissioners, was nothing but a meer Pretence and Artifice, purely to avoid executing the Agreement: and which Endeavour to that end had been before proposed, directed and consented to, by the Defendant himself, as a means to spin out the time mentioned in his Agreement, and avoid complying with his own Proposal, and solemn and deliberate Agreement aforesaid.

And the Plaintiffs Charge that the first News which arrived in Great Britain after Christmas 1733 of the expiration of the

time, mentioned in the Articles for running the Lines, being expired without their having been run, having arrived in May 1734, the Plaintiffs John and Richard Penn, both in Great Britain, did receive, at the same time, many Accounts of the great dissatisfaction, troubles and uneasiness which the expiration of the said time without the Lines having been run had given to their Tenants and Occupiers of Land there, and who refused to pay to the Plaintiffs even those very small Quit-Rents which had been reserved upon the Grants in Fee made by the Plaintiffs and their late Father to such Tenants and Occupiers; in so much, that for the quieting the Minds of the People in the said three Lower Counties, as well as for preserving the Plaintiffs Right to the Premises, the Plaintiff John Penn, the eldest Brother, at very great Inconvenience, was also obliged to go from Great Britain to Pensylvania, and did go on Board a Ship on such intended Voyage upon the 9th of July 1734, and, some time after, arrived there.

And, after such the Plaintiff John Penn's departure, the only one of the Plaintiffs who then was, or yet is, in Great Britain, was the Plaintiff Richard Penn, the youngest of the three Brothers, who was but lately come of age, and had no Knowledge of these old and intricate Disputes and Transactions.

And the Defendant did know, and hear, both of the Plaintiff John Penn's said departure for Pensylvania, and also that the Plaintiff Thomas Penn was, and for about two Years before had constantly been, in Pensylvania.

And, thereupon, he the Defendant did as the Plaintiffs have since discovered, upon the 8th of August 1734 (which was within less than a Month after the Plaintiffs John Penn's said departure) present, or cause to be presented, a Petition, to his present most Excellent Majesty in the Name of the said Defendant, stating the Charter for Maryland in such manner as he thought proper, and alledging that some Matters appeared by an Order in Council of the 4th of April 1638, relating to one William Clabourne and the Isle of Kent (although there is no such Order) and stating some part, and a part only, of the said Report and Order made in the Year 1685, but, leaving out the most essential and material Parts thereof, in the very middle and heart of the same, and particularly those Words whereby it was declared that the said three Lower Counties had, ever since the Charter for Maryland, been possessed by Christians down to that Year 1685, and had continued as a distinct Colony from Maryland: and stating that if, at the time of the Charter for Maryland, any part of the Tract of Land, mentioned in the said Report, was inhabited by Christians, yet, that they were not Subjects of the Crown of England, but Swedes and Dutch-

men, or other Subjects of Foreign Nations; and, therefore, as the said Charles Lord Baltimore suggested, (though most untruly) by his said Petition, that the whole of that part of the said Peninsula was plainly described within the Limits of the said Grant of Maryland, so that he conceived the same was intended to pass, and did pass, by that Charter, he by his said Petition, besought his Majesty, by a further Charter or Letters Patent, to confirm to the Defendant his Heirs and Assigns the whole of such part of the said Peninsula as was contained within the Limits of the said Maryland Charter, notwithstanding the said words of *Hactenus inculta* in the Recital thereof inserted.

And the Plaintiffs Charge that the Defendant by his said Petition omitted to name the Plaintiffs therein, or their Father, or the said Province of Pensilvania, or the said three Lower Counties of Newcastle, Kent and Sussex, nor took any Notice of his own solemn Agreement of the 10th of May 1732, and concealed the whole of his said Agreement, whereby, for such valuable Considerations, he had released to the Plaintiffs in Fee the said three Lower Counties by express name, and all his Right, and all his Pretences thereto, and had covenanted to make further Assurance of the same and had covenanted, by all means in his Power to support the Interest of the Plaintiffs in and to the same by Vertue of and under the said Agreement, and also concealed every Tittle of the Plaintiffs and their Mother and Father, and the Duke of York's Title, and very long and ancient Possession of the said three Lower Counties quite from the Year 1664, and the very great Improvements which have, at so great an Expence, been since made thereon, purely to obtain, from his Majesty to himself, a Grant or Confirmation of the said three Lower Counties, and to turn the Plaintiffs out of their ancient Possession and Improvements and undoubted Right, which the Defendant did and doth well know and believe his Majesty, upon a fair full and true Representation of the whole Case, was too good and just to do.—although, from any Flaw in the Plaintiffs Title it might legally have been done; which the Plaintiffs humbly insist it could not; and the Crown has never yet disturbed the Possession of any one Subject whatever, in America, who has been at any Trouble or Expence in settling there and cultivating the Country, though many of them, there, have Titles which possibly might not bear an exact and strict Examination.

And the Plaintiffs Charge that, upon presenting the said last mentioned Petition to his Majesty, his Majesty by his Order in Council of the 8th Day of August 1734, was pleased to refer the same to the Lords Commissioners for Trade and Plantations, to examine and consider the Matters and Facts contained in

the said Petition, and report the same together with their Opinion to his Majesty in Council.

And the Defendant never gave any the least Notice of such his said Petition to his Majesty, or of his Majesty's said Reference thereof to the said Lords Commissioners of Trade and Plantations, unto the Plaintiffs, or unto any one of them, or unto any Person whatever in their behalf.

But an Agent, who had formerly been concerned in some of the Plaintiffs Affairs, received Notice thereof, not from the Defendant or any Agent of his, but from the said Lords Commissioners of Trade and Plantations, who, accidentally, in the Course of the Business in their Office, knew that the Plaintiffs, and their Father, had, very long, been in Possession of the said three Lower Counties, and had named Lieutenant or Deputy-Governors for the same without Intermission.

And the Plaintiffs charge that, thereupon, Application was made to the said Lords Commissioners for Trade and Plantations, in the Presence of the Defendant, in the behalf of the Plaintiffs John and Thomas Penn, then and still in America, and of the Plaintiff Richard Penn, then in Great Britain, but in the Country, to know, what it was that the Defendant, under such general Petition, pray for, and to have reasonable time to apprise all the Plaintiffs thereof in order to make their Defence; in answer whereto, the said Defendant himself, in express Terms, did declare, in the hearing of several Persons, to the said Lords Commissioners for Trade and Plantations, that he then petitioned for a Grant of the said three Lower Counties, or to the same Effect and Purpose.

And the said Defendant did press and insist that time might not be given for Notice to the Plaintiffs in America (who, only, knew any thing, and they but little, of the before mentioned old Transactions) but that the Matters of his said Petition might be heard forthwith.

And the said Lords Commissioners for Trade and Plantations, not conceiving it Decent to let his Majesty's said Reference to them lay so long unexamined as till the Plaintiffs might have Notice in America, and an Opportunity of being heard thereafter, did appoint a Day for hearing the same, and did hear the same on the 20th and 31st Days of December 1734, but those Hearings on one side only, without hearing the Plaintiffs or any Person whatsoever on their behalf upon the Merits of the said Petition.

At which, and other times, the Defendant, and his Agents by and with his Knowledge, Privity, Consent and Direction, and in his own Presence, taking Advantage of the Plaintiffs Absence, offered to the said Lords Commissioners the said blank Paper,

not purporting to be ever authenticated any way whatever, or to be signed by any Person, and which had been so before offered by his grandfather in 1684, as a Copy of some Report or Order in Council of the 4th of April 1638 of the then Committee for Trade and Foreign Plantations: although the Plaintiffs charge there was no such Real Report or Order in Council of the 4th of April 1638 to be found, and that his the said Lord Baltimore's said Grandfather, in 1684 and 1685, had, in Person, acknowledged that there was no Original thereof, even then, to be found.

But the Plaintiffs at such Hearings on the 20th and 31st of December last, not being heard to Object to the said Paper, nor any Agent authorized by the Plaintiffs then attending the said Lords Commissioners of Trade and Plantations, and their Lordships not knowing of any Objections that might be made to the said Paper, took it to be a Real Paper.

And upon the 16th of January 1734, made a Report to his Majesty in Council, upon the Petition of the Defendant, founded chiefly, if not entirely, on the said Paper of the 4th of April 1638.

And the said Lords Commissioners, in the said Report, have only stated so much of the Determination made in 1685 as the Defendant had set forth in his said Petition.

By which Proceedings, herein before stated, of the Defendant and his Commissioners, and Agents, both in America and Great Britain, the Plaintiffs are greatly injured.

But the Plaintiffs Charge that the said Report of the 16th of January 1734 having been referred, by his Majesty's Order in Council, to the Right Honourable the Lords of the Committee of his Majesty's Most Honourable Privy Council for Plantation Affairs, their Lordships, on the 10th of May 1735, heard Council for the Plaintiffs thereupon, and their Lordships, afterwards, made a Report to his Majesty in Council.

Whereupon, by Order in Council, of the 16th Day of May 1735 (made upon reading the said last mentioned Report) his Majesty was graciously pleased to Order that the Consideration of the said Report of the Lords Commissioners for Trade and Plantations of the 16th of January 1734, and of two Petitions, presented in the behalf of the Plaintiffs, and of the Possessors and Owners of Lands in the said three lower Counties, should all be adjourned, unto the End of Michaelmas Term then and now next, that the Plaintiffs might have an Opportunity to proceed, in a Court of Equity, to obtain Relief upon the said Articles of Agreement as they should be advised; and that, after the Expiration of the said Term, either Party should be at liberty to apply to the said Committee of Council as the

Nature of the Case might require; as by the said last mentioned Petitions, Orders and Reports, relation being unto them severally and respectively had, may more fully and at large appear.

All which Actings, Doings, Misrepresentations and other Practices and Proceedings of the Defendant, and of his Confederates, and of his Commissioners and Agents, both in America and Great Britain, are contrary to Equity and good Conscience, and tend to the manifest, apparent, and grievous Wrong and Injury of the Plaintiffs, who are utterly Remediless in the Premises by the strict Rules of the Common Law, in regard the Plaintiffs Witnesses, who could prove the truth of all and singular the Premises to be as herein before set forth, are either dead, or in Parts remote, beyond the Seas, and in America, and many of them unknown to the Plaintiffs, but the Plaintiffs are properly relievable in this Honourable Court, where they may have the Personal Oath and Discovery of the Defendant touching the Matters aforesaid, and where Matters of Fraud, Deceit, and specifick Performance of Covenants and Agreements, and Matters of perpetual Injunction, are properly Examina- ble and Relievable.

Therefore, that the Defendant and his Confederates, when discovered, may, upon their severall and respective Corporal Oaths, true, full, distinct and perfect Answer make, and that, according to the best of their severall and respective Knowledges, Beliefs, and Informations, to all and every one of the Matters, Facts, Charges and Allegations herein before mentioned, as fully and amply as if the same were here again particularly repeated and interrogated to, and, more particularly, may answer, set forth and discover, according to the best of their severall and respective Knowledges, Beliefs and Informations.

And may set forth Verbally and Literally, a true Copy of the Words of the said Charter for Maryland, as they are respectively written at length or abbreviated in the Original Charter under the Great Seal of England, from the beginning of the said Charter unto the first Habendum therein.

And whether the said William Penn did not enter into the peaceable Possession of the said Province of Pensilvania in June 1681?

And into the peaceable Possession of every one of the said three lower Counties either in October or November 1682?

And who, from the last mentioned times respectively, have been in the chief Possession and Government of the said Province of Pensilvania, and of the said three lower Counties?

And who it was that peopled, settled, and improved the said Province of Pensilvania and the said three lower Counties?

Whether the said William Penn, or any Ancestors of the said Defendant?

And, at whose Expence, the same was so peopled, settled, and improved, whether at the sole Expence of the said William Penn, and his Grantees under him, or at the Expence of the Crown, or the Publick, or the Defendant, or any of his Ancestors?

And whether he in his Conscience believes it was a small, or a very great Expence?

And whether he really believes it was not at more than 60,000l. Sterling, or at what Sum, as he believes in his Conscience?

And whether the said Province of Pensilvania, and the said three lower Counties, do not, at this time, make the most flourishing and populous Province or Colony, for the Age thereof, throughout, all America?

And whether the Number of Inhabitants, in the said three lower Counties only, exclusive of Pensilvania, are not esteemed to be more than 40,000?

And whether the Defendant, when he lately came out of the Province of Maryland into the said three lower Counties, was not surprized to see how much thicker of Inhabitants, and of beautiful Plantations, the said three lower Counties were, than the said Province of Maryland was?

And may set forth, at what Place, by Name, and in what Degree and Minute of Latitude, the most Northern Part of the said Peninsula ends, and the most Southern Part of the Isthmus or Neck of Land begins, and in and through what Places, by Name, the Line of the 40th Degree compleat does run, and how many English Statute Miles there is in Distance, from the most Northern Part of the said Peninsula, to the said Line of the 40th Degree compleat, and which of those two Places lies the most Northwards?

And whether there was not such Agreement signed and executed, between the Defendant and the Plaintiffs late Mother in the said Year 1723, after the Decease of the Plaintiffs Father, as herein before mentioned, or of what other Purport and Effect, and where the same, and each Original Part thereof, now is?

And that the Defendant may set forth a true Copy of the same, at full length, in the very Words, Figures and Abbreviations as the same is in the Original, with the Parties and Witnesses Names thereto, and all the Attestations thereto, and all the Endorsements thereon, in case that before set forth by the Plaintiffs be not a true Copy thereof?

And whether the same Agreement was not published, at full length, in a Proclamation, and when, by the Lieutenant or

Deputy Governor of Pensilvania, pusuant to one of the Clauses contained in the same Agreement?

And whether the same Agreement was, or was not, and if it was, then, when it was, published by Proclamation by the Governor or Lieutenant, or Deputy Governor of Maryland?

And why, by whose Order, the same was published?

And whether the Plaintiffs said Mother, or the Plaintiffs have, from the time of the said Agreement of 17th of February 1723, to this time, ever, and when, how, and at what times particularly, disturbed any, and which of the Inhabitants under the Defendant, or molested them in their Possessions?

Or have suffered any and what particular Parcels of Lands to be surveyed, taken up or granted, either in Pensilvania, or in the said three lower Counties, or in any, and which of them, near the Boundaries which had been claimed or pretended to on either side?

And whether the Plaintiffs said Mother and the Plaintiffs respectively, did not justly and honestly fulfill and perform the said Agreement of 1723, on their Parts, according to the true intent and meaning of the same, and that, not only during the 18 Months, in the same Agreement mentioned for the Continuance thereof, but even after the said 18 Months, until the last Agreement was concluded in May 1732?

And whether the Defendant and his Agents, Commissioners and Officers did, or did not, fully and truly, and in all points, perform and fulfil the same, or whether it has not been long, and is not to this time, the usual, common and constant Method, in the said Province of Maryland, to make large Grants to Persons of a certain Number of Acres, at large, without specifying in what particular Spot, Parish, Precinct, Division or County the same do, or shall, lie or be situated; and to leave such Grantees at liberty to find out, and set down upon, and appropriate to themselves, under such Maryland Grants at large, so many Acres as therein specified, just in such Places (not before taken up and appropriated) as they can find out, and their own Fancy and Inclination leads them to?

And whether many such Maryland Grants are not, now, extant, of very large Quantities of Lands at large as aforesaid, and which have not yet been seated upon or appropriated?

And whether the Defendant does not know, and verily believe, and has not been credibly informed, that many such unappropriated Maryland Grants at large are now in the hands of all, or some, and which, of the Commissioners authorized and appointed on the Part of the Defendant for executing the Agreement of 1732, and in the hands of many, and what, other leading and considerable Men in the said Province of Maryland?

And whether the Defendant does not know, and verily believe, and has not been credibly informed, by many, or by some, of such Maryland Grantees, and others, and by whom in particular, that such Maryland Grantees, or some, and which of them, did design and intend, by Virtue, of such Maryland Grants, to set down upon and appropriate Lands, which would, or which they apprehended would, by the Agreement in 1732, fall within the Plaintiffs Bounds?

And whether as the Defendant knows, believes, and has been credibly informed, any Disappointment or expected Disappointment, in appropriating such Lands, was, or was not, any Motive or Inducement, and to whom, to the not compleatly executing the said Agreement of 1732?

And whether the Defendant did not, in the Year 1731, acknowledge the Plaintiffs Title to the said three lower Counties, and did not apply to them, not to give up to him the said three lower Counties, but to settle the Limits and Bounds of the same, and of the said Provinces of Pensylvania and Maryland?

And whether, upon the Plaintiffs not instantly complying with such the Defendant's Request and Application, he did not, thereupon, in order to spur the Plaintiffs on, present, or cause to be presented, such his Petition to his present Majesty, on the 1st of July 1731, or any and what other Petition, and to what Effect?

And particularly, whether such last mentioned Petition, and the whole Tenor thereof, did not pray and desire the Bounds might be ascertained and settled upon the foot of the said Orders of Council of 1685 and 1708?

And whether the Defendant himself did not, thereby, mean and intend to leave to the Plaintiffs the three lower Counties of Newcastle, Kent, and Sussex?

And whether, after the said last mentioned Petition was presented, and such Order thereon made as aforesaid, the Defendant did not, in his own Person, apply to some, or one, and which of the Plaintiffs, and to some and what Agent of theirs, or Person concerned for them, and did not, again press and desire that a Treaty might be set on foot for the settling and agreeing the Bounds and ending all Disputes between the Plaintiffs and him?

And whether, from the 11th of June 1731, to the 10th of May 1732, such Treaty and Agreement was not on foot, between him and the Plaintiffs, and many Meetings had between the Plaintiffs and their Agents and the Defendant and his Agents, at many different Places, within that space of time?

And whether, at some, and which, of such Meetings, and at what Time and place, the Defendant, on his Part, did not pro-

duce a Map or Plan of the Parts in Question and other adjacent Places, which he himself said and acknowledged his Agents had sent, to him, from America, in order to settle the said Disputes?

And whether the Plaintiffs, on their Part, did not also produce a Map or plan of the Parts in Question?

And whether the Map or Plan, so produced by the Defendant was not, by him in Person, at some of the said Meetings, mark'd with a Pencil, in what manner the dividing Lines should run?

And whether the Plaintiffs did not insist that the Head Line of Maryland should be not so little as 15 Miles, but 20, or at least 18, or 17 Miles, South of Philadelphia, which he did not agree to?

And whether the Defendant did not insist, and the Plaintiffs agree, that, not the Plaintiffs Map or Plan, but, the said Map or Plan of the Defendant should be engraved, in order to be affixed or annexed to, and to explain the meaning of, the Agreement they should come to?

And whether the Defendant did not, at the said Meetings oppose the Person the Plaintiffs proposed to engrave the Defendant's Map or Plan, and name and insist that Mr. Senex should do the same?

And whether the Plaintiffs did not consent thereto, and whether the said Senex did not engrave the same, and was jointly paid for so doing, by the Plaintiffs and Defendant?

And whether the said engraved Map or Plan of the Defendant was not printed or stamped on the Original Articles of Agreement, afterwards executed on the 10th of May 1732?

And whether there is any, and what Material Difference, between the Map or Plan so produced by the Defendant, and that printed or stamped on the same Original Articles of agreement of 1732?

And whether the Defendant, at a Meeting between him and the three Plaintiffs, or some of the said three Plaintiffs, upon the 22d of July 1731, or at any and what other time, did not produce, out of his own Pocket, a written Paper, written of his own proper Hand-Writing, and read the same to the Plaintiffs, as his own Note or proposal of what was to be agreed and done between the Plaintiffs and him?

And what was and were the true Contents thereof, and may set forth an exact, full and true Copy thereof, at full length, in the very Words, Figures, Letters, and Abbreviations thereof?

And particularly, whether, in two several Parts thereof, the said Charles Lord Baltimore, did not expressly mention that

the Circle, round Newcastle, was to be 12 Miles from Newcastle, and 12 Miles distant from Newcastle?

And whether that was not, in the Month of July 1731, his own real intention and meaning?

And whether he in his Conscience does believe that running a Circle at the Distance of only two Miles, or less from Newcastle, is, in any sort, according to his said own Proposal?

And whether the Plaintiffs or their Agent did not, at the said Meeting upon the 22d of July 1731, desire of the Defendants to deliver to them the said Note or Proposal of the said Defendant, or a Copy thereof, in order to prepare the written Agreement at full length pursuant thereto?

And whether the Defendant did not, then, express himself that he had not, at that time, any Copy thereof, but that he would deliver the same to his Solicitor in order to give the Plaintiffs a Copy thereof?

And whether the Defendant did then instantly deliver the same over to Mr. John Sharpe the Solicitor for the Defendant, for the very purpose of assisting to prepare the said Agreement at full length, and of giving the Plaintiffs a Copy of the said Note and Proposal in order thereto?

And whether the Defendant did not then, at the said Meeting, consent and direct that the said Mr Sharpe should give the Plaintiffs a Copy thereof, and whether, in some few days afterwards, the said Mr. Sharpe did not give to the Plaintiffs a Copy thereof, as the said Defendant has heard, believes, and been informed?

And that the Defendant may set forth where the said Original Note or Proposal is, and may produce the same at the hearing of this Cause?

And whether, upon the 16th Day of August 1731, or when else, the Plaintiffs or their Agent, did not deliver over to the Defendant, or his Agent, a Draught of Articles of Agreement between the Defendant and the Plaintiffs, prepared upon the foot of the Defendant's own Note and Proposal before mentioned, in order to be considered and settled by the Defendant and such other Persons as he should think fit to make use of, or advise with therein?

And whether such Draught of Articles of Agreement was not, constantly and continually, from the said 16th Day of August 1731, to the Beginning of May 1732, or for how much of the said time, in the Custody, and under the Consideration and Examination, of the Defendant, and of Mr. Wynne his Council, Mr. Sharpe his Solicitor, Mr. Senex his Mathematician, and Mr. Ogle his Lieutenant, or Deputy Governor of Mary-

land, and divers others, and who by Name, made use of by the Defendant to assist and help him in settling the same?

And whether the Defendant, during such time taken for the Examination, Consideration and Settlement of the said Draught, did not propose and insist on several, and what, and how many, new and different things to be provided for and inserted in the said Draught, which had not at that time been inserted in the said Draught, nor in the Defendant's own Note and Proposal, nor had ever once been proposed, or talk'd of, during the Treaty between the Plaintiffs and Defendant?

And whether the Plaintiffs did not, at his Request, consent and agree to every one of such his new Proposals, or Afterthoughts.

And particularly, whether he did, or did not, insist on all and every the Matters and Things herein before for that Purpose mentioned, or any and which of them?

And whether, in the Treaty in order to the said Articles of Agreement of May 1732, any one Matter or Thing, whatsoever, proposed or insisted on by the Plaintiffs, was yielded or agreed to by the Defendant?

And whether, on the contrary, every Matter and Thing whatsoever, which was proposed or insisted on by the Defendant, was not yielded and agreed to by the Plaintiffs?

And that the Defendant may set forth all and every the Particulars, which he had insisted on at any time during the said Treaty, which were not agreed to by the Plaintiffs, and also, all and every the Particulars which the Plaintiffs insisted on, at any time during the said Treaty, which were agreed to by the Defendant?

And whether the said Draught of the said Agreement, after the same was settled by the Defendant and every one of his before-mentioned Agents, Assistants and Advisers to his own Satisfaction, was not engross'd, and was not executed by the Defendant and the Plaintiffs on the 10th Day of May 1732?

And whether, soon after such the Execution of the said Articles of Agreement, namely, on or about the 12th Day of the same May, the Plaintiffs and Defendant did not, severally and respectively, execute such several Commissions as before mentioned, authorizing 7 Commissioners therein named, or any 6, 5, 4, or 3 of them, to mark, run and lay out the Bounds so agreed upon?

And whether the said Commission, so executed by the Defendant, and that so executed by the Plaintiffs, were not, exactly like and agreeable, each to the other, in Form and Substance, and were not both engross'd from one and the same Draught or Copy, only changing the Names and additions of the Persons

who granted the Powers and Authorities thereby given, and to whom the Powers and Authorities were granted?

And whether such Commissions were not, respectively, sent over to America, and whether, on the Request of the Plaintiffs Commissioners, the Meetings, between the Plaintiffs Commissioners and those for the Defendant, were not begun, at Newtown in Maryland, on the 6th Day of October 1732, and were not continued, adjourned, and held again, at all and every the Times and Places herein for that purpose mentioned, down to and upon the 24th of November 1733, being near 14 Calendar Months?

And whether, at those Meetings between the said Commissioners, all and every of the Matters and Things herein before mentioned did not pass, and were not Transacted, at the Times, in the Manner, by the Persons, and with the Views and Designs, herein before mentioned and set forth, or with any, and what other Views, Intents and Designs, severally and respectively.

And particularly, that the Defendant may, upon his positive Oath, say for how long, during the said Meetings between the said Commissioners, he the said Defendant was in America, and in or near to the Province of Maryland?

And whether his Commissioners did, or did not, make all and singular the Cavils and Objections herein before mentioned, or not?

And whether he the defendant was knowing of, or privy to, the same, or to any and which of them, or not?

And whether he, at that time, advised, consented to, directed, approved of, or was acquainted with, any and which of the Doubts, Scruples and Objections, or pretended Doubts, Scruples and Objections, made by his said Commissioners at such Meetings, or any and which of them?

And if the Defendant does not know, and in his Conscience believe, and has not been credibly informed, that it was the Intention and Resolution of all the Commissioners by him appointed as aforesaid, or of some and which of them, and who by Name, to defeat and prevent the running out the Lines aforesaid agreed upon by the said Articles?

And whether the said Commissioners, or some other Person or Persons, did not, after the Execution of the said Engros'd Articles of the 10th of May 1732, endeavour to persuade the Defendant not to compleat and perform the same?

And whether he, himself, was not, by some means or other, brought or induced to wish and desire, or intend, that the said Agreement might, or should not, be carried into Execution.

And whether the Defendant ever, and when, did consult, converse or advise with any, and what, other Person or Persons,

and when, and where, how the Execution of the said Agreement of May 1732 might be avoided or evaded, but so, as not to forfeit the Penalty or Sum of 5000*l.* therein mentioned?

And whether the said Commissioners of the Defendant, or any and which of them, or who else, did Object to the want of Parties in the Commission to the Plaintiffs Commissioners, and did raise such Objections and Difficulties to the making or fixing a Center for the said Circle, and to the Distance that the said Circle was to be from the Town of Newcastle, or not?

And whether such Objections were made, or insisted on, with the Privity, Consent, Direction or Good-liking, of the Defendant?

And whether he did, and does, approve of all the Proceedings of his Commissioners, herein before mentioned, or what and which Parts of the same he did, and does, Dislike and Disapprove of?

And whether the Defendant does know, or in his Conscience believe, that his Commissioners acted, in all things, with that Candour, Fairness and Dispatch, which he himself intended and agreed they should do at the time when he executed the said Agreement on the 10th of May 1732.

And whether the Defendant is, or is not, willing and desirous that the said Agreement of the 10th of May 1732 should be executed, fulfilled and performed, according to the true intent and meaning of the same, or why he is not?

And, at what Distance from the Town of Newcastle he himself d's insist the Circle, or part of a Circle, was agreed to be run, and ought to be run, and whether, at the several times of his producing and reading his said Note or Proposal, and also of executing the said Agreement on the 10th of May 1732, he meant, or intended that the said Circle, or part of a Circle, should be at the Distance of two Miles only, or of somewhat less, or at the Distance of 12 Miles from the said Town of Newcastle?

And may set forth whether Commissioners on each side, proceeding with Fairness, Candour, and Dispatch, and having no Difference of Judgment arising between them, might not, within the Space of four Weeks, at a proper Season of the Year, mark and run out so many, and so much of the Circle and Lines, mentioned in the said Agreement of May 1732, as were thereby agreed to be run and mark'd out; or, in what length of time the same might, at a convenient Season of the Year, be done, if no Delay, or Difference of Judgment, happened therein.

And whether the Defendant did not present or cause to be presented, to his present Majesty, in his own Name, such Petition as herein before mentioned, upon the 8th of August 1734, or any and what other Petition, and for what Purpose.

And whether he did not, in Person, before the Lords Commissioners for Trade and Plantations, expressly declare that he meant and intended, by his last mentioned Petition, to pray his Majesty for a Grant of the three lower Counties, and did not in such Words mean the three lower Counties of Newcastle, Kent, and Sussex.

And why, and with what Views and Designs, in his said Petition, he mentioned neither the Plaintiffs, nor their Father, nor the said Province of Pensilvania, nor the said three lower Counties by Name, nor set forth therein any thing at all relating to the said Agreement of May 1732, and why he asserted therein that there was such a Report or Order in Council of the 4th of April 1638 relating to the said William Clabourne and the Isle of Kent, when his Grandfather had in Person declared, about 50 Years before, that there was no such Original Order?

And why, in inserting in his last mentioned Petition the Account of what was done in the Year 1685 as aforesaid, he omitted and concealed those very material Words, in the Heart of the Report of the then Committee for Trade and Foreign Plantations, which imported that the Tract of Land then in Dispute had ever since from the Date of the said Patent for Maryland in 1632 been inhabited and planted by Christians and had continued as a Distinct Colony from that of Maryland?

And why he concealed, in his said last mentioned Petition, the old Possession, and great Improvements, made by and under the Plaintiffs and their said late Father?

And whether the Defendant did not, and doth not, think, and in his Conscience believe, that those Facts, so by him omitted and concealed in his said Petition, were true, and proper and material Facts to be laid before his Majesty and his Ministers, or not?

And whether the Plaintiff John Penn was not gone for America, at the time the Defendant presented the said last mentioned Petition to his Majesty?

And whether the Defendant did not propose and expect some Advantage to himself, by the Absence of the Plaintiffs John Penn and Thomas Penn?

And whether the Defendant did present the said last mentioned Petition to his Majesty in order to obtain a Grant of the said three lower Counties for himself, and for his own Use, Benefit, and Advantage, or, for the Use and Benefit of the Plaintiffs and as a Trustee for them?

And in Case he meant and intended and hoped to obtain a Grant of the same for himself, that the Defendant may set forth why, and for what Reasons, he never gave the least Notice

of such his last mentioned Petition to the Plaintiffs, or any of them, or any Agent of theirs, but carried on the same privately and wholly unknown to the Plaintiffs.

And whether there have not been such Orders, Proceedings, Petitions and Reports, founded on the said last mentioned Petition of the Defendant, as are herein before mentioned and set forth, or what others, and to what Effect and Purpose?

And whether the Defendant does admit that the said Agreement of the 10th of May 1732 does now exist, and subsist in Full Force and Virtue, or whether he does insist that the same is absolutely void?

And, in Case he insists that the same is void, that, then, he may set forth, minutely, exactly and particularly, why, and for what Reasons, he insists the same is void?

And that the Defendant may set forth and discover whether it is not as easy and as practicable (in a proper Season of the Year) now to run, mark and lay out the Bound-Lines, agreed upon by the said Articles of the 10th of May 1732, as it was between the Month of October 1732 and Christmas 1733, or what new Difficulties have, since the last mentioned time, arisen to make that Work more Difficult, or less Practicable, now, than at that time?

And how long Space of Time, as he believes, would be really necessary for Commissioners, that would proceed with Fairness, Candour and Dispatch, to run out all the several Lines and Bounds pursuant to the said Agreement of May 1732, in case no Difference, or pretended Difference, in Judgment arose between them?

Relief prayed.

1. And that the Plaintiffs may be at liberty to examine their Witnesses, whom they charge are very aged and infirm and likely to die, to perpetuate their Testimony,

2. And that the Plaintiffs may be quieted in the Possession of the three lower Counties, which have so often as aforesaid been adjudged not to be comprised within the Bounds granted as above mentioned to the said Cecilius Lord Baltimore, by that Jurisdiction which, in the last resort, determines all Questions concerning Property in any of his Majesty's Plantations in America,

3. And that the Defendant may be decreed to desist from giving them any further Trouble, or Molestation by renewing the said old and heretofore often over-ruled, Claims to the same,

4. And that the said recited Articles of Agreement, of the 10th of May 1732, may be decreed and declared to exist and subsist and to be in full Force and Virtue,

5. And may be decreed to be forthwith specifically performed, and to be carried into full Force and Execution, in all Points and Respects whatever.

6. And that all necessary and proper Directions may be given, in order thereto (the Plaintiffs hereby offering to do every thing which shall be adjudged necessary, on their Parts, in order to the same.)

7. And that the said pretended Doubts, as to the fixing a Center for the said Circle around the said Town of Newcastle, and as to the Dimensions of the said Circle, or Distance from the said Town, at which it is to be marked out, and any other Doubt, or pretended Difficulty, that the Defendant hath, or pretends to have, relating to the said Articles of Agreement, or any thing therein contained, or the Execution and Performance of the same, may be removed and cleared up, by the Authority and Decree of this Court (the Plaintiffs hereby Offering to fix the said Center in the Middle of the said Town of Newcastle.)

8. And that the Defendant may now, instantly, and may, again, after the said Lines and Bounds shall be run, mark'd and laid out, in a more certain and particular manner, pursuant to his Covenants and Agreements in the said recited Articles of Agreement contained, make further and better Assurances and Conveyances to the Plaintiffs, their Heirs and Assigns of the said Province of Pensylvania, and of the said three lower Counties of Newcastle, Kent, and Sussex, to be bounded, and bounded, according to the true Intent and Meaning of the said Articles of Agreement of the 10th of May 1732, and of all his Right, Interest, Pretensions, Claim and Demand in and to the same; such Conveyances and Assurances to be settled, in case the Parties differ about the same, by a master of this Honourable Court (the Plaintiffs hereby offering, on their parts, to make reciprocal Assurance and Conveyances of the said Province of Maryland, to be so bounded as aforesaid, and of all their right, Interest, Pretentions, Claim and Demand in and to the same, unto the Defendant, his Heirs and Assigns.)

9. And that the Defendant may be decreed to pay to the Plaintiffs all the Costs and Expences, of their said Commissioners, and otherwise, relating to the executing the said Agreement of May 1732, and likewise all the Costs which the Plaintiffs have been, any way, put to, by reason of the Breach and Non-Performance on the Part of the Defendant of the said recited Articles of Agreement of May 1732, and by reason of the said Petition of the Defendant presented to his Majesty on the said 8th of August 1734,

10. And that the Plaintiffs may have all such further and

other Relief, in the Premises, and in such other manner, as shall be consistent with Justice and Equity,

11. And may have a perpetual Injunction, to quiet the Plaintiffs, and their Grantees, Tenants and Occupiers, claiming by Titles under the Plaintiffs, or under those from whom the Plaintiffs claim and derive Title as aforesaid, in the peaceable Possession and Enjoyment of the said Province of Pensilvania, and the three lower Counties of Newcastle, Kent, and Sussex, to be bounded, and bounded, as aforesaid,

12. And to have Writs of Injunction, and Writs of Subpœna.
IS THE BILL.

1735. *May* 16.

The Order in Council was made, at least giving leave, if not directing, that such a Bill should be brought.

1735. *June* 21.

In five Weeks time afterwards, this very long Bill was drawn and filed.

1735. *June* 25.

The Defendant was served with an Office Copy of the Bill and a Subpœna to Answer.

1735. *July* 1.

The Plaintiffs obtained an Order for a Sequestration unless Cause, for want of an Appearance.

1735. *July* 29.

The Plaintiffs obtained another Order for a Sequestration unless Cause, for want of an Answer.

1735. *Aug.* 2.

The Defendant moved and obtained an Order to refer our Bill for Scandal and Impertinence.

1735. *Oct.* 11.

The Plaintiffs moved and obtained an Order that the Master should proceed on that Reference *de die in diem*.

1736. *May* 25.

Master Eld reported our Bill not Scandalous nor Impertinent.

1735. *Dec.* 18.

The Plaintiffs obtained an Order to amend, and did amend, their Bill.

1737. *June* 15.

The Defendant, above two Years after the Bill filed, put in his Answer, having spun out that time by his Reference for Scandal and Impertinence, and by Privilege of Parliament.

DEFENDANT'S ANSWER, SWORN 15 JUNE, 1737.

Believes that there is, in Amercia, a certain Tract of Land or Peninsula, shooting out from the main Continent, South

ward, unto the Atlantick Sea or Ocean; and, for ought this Defendant knows to the contrary, and as this Defendant has heard and believes, the said Peninsula or Tract of Land and is bounded, on the West, East, South, and North Sides thereof, as in the Bill is for that Purpose particularly set forth and described.

Hath heard, and believes it may be true, that the great River or Bay of Delaware, in the Plaintiffs said Bill mentioned, runs between the same Peninsula or Tract lying on the West Side thereof, and the Territory now called West-New-Jersey lying on the East part thereof.

And that the said West-New-Jersey might be, heretofore, called, successively, New-Belgia, New-Netherlands, and New England, as in the Bill is alledged.

But saith that he doth not know, nor can he set forth, by whom the said Peninsula, or Tract or Parts Contiguous thereto, were first discovered, or the time when they were first discovered; nor whether Capt. John Smith, an Englishman, in the Bill named, was the first Discoverer thereof, about the time in the Bill for that purpose mentioned, or at any other, or what time; never having so much as heard the same, or had any Account of the said Capt. Smith's being the first Discoverer thereof, save from the Bill.

Nor can set forth whether the said Capt. Smith did, or did not, give or affix Names to several, or any, of the Places on that part of the main Continent which lay over against the said Peninsula on the Western Side of the Bay of Chesapeake, as in the Bill is set forth: the Defendant, if Capt. Smith so did, being an entire Stranger thereto, not having ever heard of the same save by the Bill.

Doth not know, nor can set forth, whether the said Capt. Smith, at any time after his return from his pretended Voyage in the Bill mentioned, did, or did not, cause to be printed and published a Book, giving any Account of his Voyages and Discoveries, as in the Bill is alledged; nor, if the said Capt. Smith did cause such Book, to be printed and published, whether such Book was printed in or about the time in the Bill for that purpose mentioned, or at any other time, or when, or whether he annexed to such Book a Map or Plan of the said Peninsula, or of any of the adjacent Parts of what was then called by the general Name of Virginia, or whether he intitled his Book as in the Bill is for that purpose particularly mentioned and set forth.

Though he hath heard and believes there is such a Book extant, and in print, as is described by the Bill, and therein alledged to have been printed and published by the said Capt. Smith; but as the same purports, and appears, from the Title

thereof, as stated and set out in the Bill, to have been printed and published now upwards of 100 Years since, cannot take upon him to say, or set forth, whether the same was so printed and published by the said Capt. Smith at the time, or in the manner, in the Bill mentioned, or, whether the same was not printed and published by any other Person, under Colour of the said Capt. Smith's Name, and without his Knowledge or Consent, in order to give the better Authority to the said Book, and to promote the Sale thereof for the Benefit of the Author or Publisher thereof.

But, whether the said Book is a well known Book among Historians, Geographers, and Mathematicians, or of what Authority or Esteem the same may be in amongst them, nor whether the said Book and the Map of Virginia therein contained, are held in any, or what, Estimation amongst learned Men, nor whether the same are by them, or any one else, reckoned and esteemed as the first and earliest Account and Description, or Map, ever given of those Parts in and near to the said Peninsula by any Englishman whatsoever, as in the Bill is suggested, this Defendant doth not know, nor can set forth; this Defendant having but very little Knowledge of the same himself, and never having heard much concerning the same.

Nor can this Defendant set forth whether the said Map of Virginia, thereto annexed, contained the Degrees of Longitude and Latitude according to the best Observations and Discoveries then made.

But saith he hath been credibly informed, and believes, that the said Map hath been, many Years since, found by Experience, to have been, in many respects, faulty and erroneous, and by no means a true or correct Map thereof, and in no wise to be depended upon.

And is advised, and apprehends, that all this Part of the Plaintiffs Bill, touching who was the first Discoverer of the said Peninsula, and in relation to the said Capt. Smith, and the said Book, and Map pretended to be published by him, are wholly immaterial, and no ways relative to any of the Matters in Question: in this Cause.

Believes it to be true that the three lower Counties of Newcastle, Kent, and Sussex, in the Bill described and mentioned, are situate on the Eastern Side of the said Peninsula or Tract, and also above the Peninsula or Tract, within the main Land or Continent, and, towards the Sea and the Estuary of Delaware, as in the Bill is set forth.

But denies that he either knows, or believes, or hath ever heard, that the said three Counties have been ever called, or went under the general Name of, the Territories belonging to Pensilvania;

the said Counties, or any Part of them, or either of them, having never, to the best of this Defendant's Knowledge or Belief, been looked upon, or esteemed, to be any Part of, or to belong to, Pennsylvania, or the Territories thereof, by any other Persons than the Family of the Penns themselves, and their Dependants and Adherents, whose Interest it was to endeavour to have them thought or esteemed Part of Pennsylvania.

Nor does this Defendant know or believe, nor did he ever hear, save from the Family of the Penns and their Dependants and Adherents, and save from the Bill, that the Territories belonging to Pennsylvania did, or could, or does, signify and mean, or comprehend, or include, the said three lower Counties, or any part of them or either of them.

Doth not know, nor can set forth, whether the said three lower Counties were ever called or comprehended under the Name of the Settlement on Delaware, or by the Name only of Delaware, or at other times by the Name of the Province of Delaware, this Defendant having never heard the same so called, or called by any other Name or Names than the three lower Counties on Delaware, or the Counties of Newcastle, Kent, and Sussex, and if they ever were called, or comprehended, under the Names in the Bill mentioned, this Defendant believes it must have been a great many Years ago, and in the Infancy of their Settlement, and before any considerable Parts thereof were inhabited or cultivated; nor is at all Material, in the Judgment and Belief of the Defendant, by what Name or Names they may have been called.

Denies that he either knows, or ever heard, otherwise than by the Bill, or believes, that the said three lower Counties on Delaware, of Newcastle, Kent, and Sussex, were, of very early and ancient Times, the beginning whereof is not known (as is pretended by the Bill) settled, planted and inhabited by Christians of the Swedish Nation, or that the same were afterwards held and inhabited, for many Years, by Christians under the Dominion of the States General of the United Provinces, in the manner as in the Bill is for that purpose set forth and mentioned.

But, on the contrary, hath always understood and believes, the same were not settled, planted and inhabited by Christians at any time before, or until after, the Grants thereof to this Defendant's Ancestor by his Majesty King Charles the First, as herein after is more particularly set forth.

But saith he hath heard and believes that some few itinerant Swedish and Dutch Traders did, now and then, visit, and resort to, some small and inconsiderate Part of the said three Counties, antecedent to the said Grant; but never heard, o

believes, that the said Swedes or Dutch, or any other Christians whatever, had ever formed, or made, any abiding Settlement there before the said Grant thereof to the Defendant's said Ancestor as herein mentioned; all the Christians there being only a few Swedish and Dutch, straggling, itinerant Traders, that now and then resorted to that part of the Skirts or Borders of the said Counties, for the Benefit and Conveniency of Trade with the Natives.

And is advised, and conceives, it is wholly immaterial, as to any Question that can arise between him and the Plaintiffs, whether the said Tract of Land was, or was not, inhabited by Christians antecedent to the said Grant.

Neither knows, believes or ever heard, save from the Plaintiffs or their Agents, and the present Bill, that the said Counties have, ever since the Year 1663, been in the quiet Possession of the late James Duke of York, and of the Plaintiffs Father, and of the Plaintiffs in their own Right, as is untruly alledged in and by the Bill, or that the Complainants have now any Right to the Possession thereof.

On the contrary, saith, he this Defendant, ever since he came of age, and his Ancestors, before him, as he hath heard and believes, have, all along, ever since the Grant of the said three Counties to his Ancestor as aforesaid by King Charles the First, and both before, and after, the said Year 1663, from time to time, asserted, supported and maintained, to the utmost of their Ability and Power, the Right and Title to the Possession of the said three Counties; and this Defendant's said Ancestors did, and exercised, Acts of Ownership thereon, and received Rents from several of the Tenants and Inhabitants thereof, and were at very great Expences and Charges in Improving and Cultivating the same, and in driving out, and defending themselves from, the barbarous Indians and Natives that first inhabited there, before the same was known or found out by any Christian Settlers, to the Knowledge or Belief of this Defendant.

Saith that, in or about the Year of our Lord 1632, Cecilius, then Baron of Baltimore, did petition his late Majesty King Charles the First, praying leave to transport a Colony of the English Nation into America, and believes it may be true that the said Cecilius, then Lord Baltimore, might, in his said Petition to King Charles the First, suggest that the parts of America, he so prayed to have Liberty to transport an English Colony into, was not then cultivated and planted, though in certain Parts thereof inhabited by certain barbarous People having no Knowledge of Almighty God, and, therefore, besought his Majesty to Give and Grant to him, the

said Cecilius, and his Heirs for ever, all such the said Country in his said Petition mentioned, with certain Priviledges and Jurisdications for the Government thereof, as in the Plaintiffs said Bill is for that purpose set forth and mentioned; but this Defendant, having never seen such Petition, cannot, with any certainty, answer or set forth whether the same was so or not, though, from the Words of the Grant, made upon such Petition, and herein after particularly set forth, this Defendant believes the Plaintiffs Allegations in their said Bill, with respect to the said Petition of the said Cecilius then Baron of Baltimore, may be true.

Likewise admits that, thereupon, his late Majesty King Charles the First, by his Letters Patent, under the Great Seal of England, bearing Date at Westminster the 20th Day of June, in the Year 1632, did Give and Grant, unto the said Cecilius, in Fee, two several Tracts of Land, namely, one Tract which was part of the before-mentioned Peninsula, and one other Tract of Land which was part of the Main Land, lying Westward of the said Peninsula, and on the West side of the said Bay of Chesapeake; the respective Buttals and Boundaries of which said two several Tracts of Lands, so granted to the said Cecilius, by the said Letters Patent of his Majesty King Charles the First, are particularly set forth and described in the said Letters Patent under the Great Seal of England, now in Defendant's Custody and ready to be produced as this Honourable Court shall please to direct; and which Letters Patent, as the Plaintiffs by their Bill have required this Defendant to set forth the same verbally and literally from the beginning thereof unto the first Habendum therein, this Defendant saith he hath, accordingly, herein set forth the same; and likewise, in regard that the Habendum or granting part of the said Grant tends to explain the first or the reciting Part thereof, which cannot be so clearly or so well understood, without the Habendum, this Defendant hath, therefore, set forth the said Grant or Letters Patent, Verbatim, down to the end of the Habendum; the same, to the best of this Defendant's Knowledge, Examination and Belief, being verbally and literally, and the Words of the said Original Charter respectively written at length and abbreviated, as follows (Viz.)

Rex, &c. Omnibus ad quos, &c. Salutem. Cum per dilectus et perquam fidelis subditus noster, Cecil Calvert, Baro de Baltimore in Regno nostro Hibernia, filius & hæres Georgii Calvert Militis, nuper Baronis de Baltimore in eodem regno Hibernia, patris inhærens vestigiis laudabili quodam et pio Christiana religionis pariter, & imperii nostri territor' dilatandi studio flagrans, licentiam nostram, ut copiosam Anglicanæ gentis

Coloniam, industria & impensa sua, ad certam quandam regionem, inferius describendam, in terra quadam, in partibus Americae, haecenus inculta, & barbaris nullam divini Numinis notitiam habentibus in partibus occupata, deducere possit, totamque illam regionem, cum certis quibusdam privilegiis, & jurisdictionibus, ad coloniam suam, & regionis praedictae salubre regimen & statum pertinentibus, a regia nostra celsitudine, sibi & haeredibus suis dari, concedi & confirmari, humiliter supplicaverit; Sciatis igitur quod nos, pium et nobile, praefatorum Baronum de Baltimore, propositum & studium, regio favore prosequentes, ex gratia speciali, certa scientia & mero motu nostris, dedimus, concessimus & confirmavimus, & per hanc praesentem chartam nostram, pro nobis haeredibus & successoribus nostris, praefato Cecil modo Baroni de Baltimore, & haeredibus & Assignatis suis, damus, concedimus & confirmamus Totam illam partem peninsulae, sive chersonesus, jacentis in partibus Americae, inter oceanum ex oriente, & Sinum de Chesapeake ab occidente, a resid' ejusdem, per rectam lineam a promontorio sive capite terrae vocato Watkin's Point juxta sinum praedictum prope fluvium de Wighco, seuat' ab occidente, usque ad magnum oceanum, in plaga orientali' ductam, divisam; Et, inter metam illam a meridie, usque ad partem illam aestuarii de Delaware, ab aquilone, quae subjacet quadragesimo gradui latitudinis, Septentrionalis, ab aequinoctiali, ubi terminatur Nova Anglia; Totumque illum terrae tractum, infra metas subscriptas; Viz. transeundo, a dicto aestuario vocato Delaware Bay, recta linea, per gradum praedictum, usque ad verum meridianum primi fontis fluminis de Pattowomack, deinde, vergendo, versus meridiem, ad ulteriorem dicti fluminis ripam, & eam sequendo, qua plagam occidentalem & meridionalem spectat, usque ad locum quendam, appellatum Cinquak, prope ejusdem fluminis ostium seuat'um, ubi in praefatum Sinum de Chesapeake evolvitur, ac, inde per lineam brevissimam, usque ad praedictum promontorium, sive locum, vocatum Watkin's Point, (ita quod totius terrae tractus per lineam praedictam, inter magnum oceanum & Watkin's Point divis' usque ad promontorium vocatum Cape Charles, & singula sua appenditia, nobis, haeredibus & successoribus nostris, integre remaneant excepta, imperpetuum) nec non omnes insulas, et insululas, infra limites praedictos. Concedimus etiam, & confirmamus, eidem Baroni de Baltimore, haeredibus & Assignatis suis, omnes & singulas insulas, & insululas, ab orientali praedictae regionis littore orientem, versus in mari, natas, vel nascendas, infra decem leucas marinas, ab eodem littore seuat'as, cum omnibus & singulis portubus, navium stationibus, aestuariis, fluminibus, & iretis, ad regionem, vel insulas, praedictas, pertinentibus; omnesque fundos, terras, campestria,

silvas, montana, paludes, lacus, flumina, æstuaria, & freta, infra metas, terminos & limites prædictos, scituata, seu existentia: cum ejuscunque generis piscium, tam balænarum, Sturgeonum & aliorum, regalium quam aliorum, in mari, sinibus, fretis vel fluminibus infra præmissa, piscationibus, & pisce ibidem capti: Omnesque insuper auri, argenti, gemmarum, lapidum preciosorum, & aliorum, quascunque, sive lapidum, sive Metallorum, sive alterius ejuscunque rei aut materie, venas, mineras, & fodinas, tam apertas quam occultas, infra regionem, insulas, seu limites prædictos, repertos & reperiendos; Et hoc amplius omnium ecclesiarum, quas (crescente Christi cultu & religione) infra dictam regionem, insulas, & insululas, & limites prædictos, futuris temporibus ædificari contigerit, patronatus & advocaciones; Una cum licentia & facultate ecclesias, capellas & oratoria, in locis infra præmissa congruis & idoneis, extruendi & fundandi; eaque dedicari & sacrari juxta ieges ecclesiasticas regni nostri Angliæ faciendi; cum omnibus & singulis hujusmodi, ac adeo amplis juribus, jurisdictionibus, privilegiis, prærogativis, regalitatibus, libertatibus, immunitatibus, juribusque, regalibus & franchesiis, quibuscunque, temporalibus, tam per mare quam per terram, infra regionem, insulas, insululas, & limites prædictos, habend' exercend' utend' & gaudend' prout aliquis Episcopus Dunelmensis, infra Episcopatum sive Comitatum Palatinum Dunelmensis in regno nostro Angliæ, unquam antehac habuit, tenuit, usus vel gavisus fuit, seu de jure habere, teneri, uti vel gaudere debuit aut potuit, Ipsumque modo Baronem de Baltimore, & hæredes suos, regionis prædictæ, cæterorumque omnium præmissorum, veros et absolutos Dominos & Proprietarios (exceptis præexceptis) salva semper fide, & ligeantia, ac dominio directo, nobis, hæredibus & successoribus nostris, debitis, pro nobis, hæredibus & successoribus nostris, facimus, creamus & constituimus per præsentem; habend' tenend' possidend' & gaudend' prædictam regionem, insulas, insululas, & cætera præmissa, præfato modo Baroni de Baltimore, & hæredibus & assignatis suis, ad solum & proprium opus et usum ipsius modo Baronis de Baltimore, hæredum & assignatorum, suorum, imperpetuum; tenend' de nobis, hæredibus & successoribus nostris, Regibus Angliæ, ut de Castro nostro de Windsore in comitatu nostro Berks, in libero & communi socagio, per fidelitatem tantum pro omnibus Servitiis, & non in Capite, nec per Servitium militare. As by the said Original Letters Patent, under the Great Seal of England, to which Defendant for his greater certainty craves Leave to refer, relation thereunto being had, may more fully and at large appear.

Defendant cannot but observe, that, notwithstanding the Words *Hactenus inculta* are made use of in the Preamble of

the said Charter, the Lands thereby granted being then lookt upon and esteemed to be incultivated, yet, they are not inserted by way of restriction in the Body, or granting part thereof; and, therefore, Defendant is advised, and insists, the Lands, thereby described and granted, are not restrained to the said Words *Haetenus inculta*, but *dīd*, all, well pass by the said Letters Patent, notwithstanding the said Words *Haetenus inculta* so recited in the Preamble thereof.

Admits that his late Majesty, King Charles the First, by his said Letters Patent to the said Cecilius, did grant, unto the said Cecilius in Fee, all Islands and Islets within the Limits described in the said Grant as aforesaid, and all and singular the Islands and Islets which were, or should be, in the Ocean, within ten Leagues from the Eastern Shore of the said Country towards the East as in the Bill is set forth, and that his said late Majesty did thereby erect the said Lands, so granted, into a Province, by the Name of Maryland, with certain Priviledges and Jurisdictions for the better governing thereof.

Doth not know, nor can set forth, whether the said Letters Patent or Grant, so made to the said Cecilius as aforesaid, was, or was not, so described, or whether the Tracts, which were thereby granted, were, or were not, so bounded, by the help of the said pretended Captain Smith's said Book and History or Map of Virginia, and no other, as by the Bill is alledged; nor whether any skilful Persons own or acknowledge or believe the same, for the Reasons in the Bill mentioned, or for any other Reasons; but this Defendant, having never compared the said Book or Map with the Names and Descriptions of the several Places mentioned in the said Letters Patent, hath no reason to believe the Boundaries or Descriptions in the said Letters Patent were taken from such Book or Map.

Defendant is advised and insists the said pretended History of Smith cannot, in any respect, add to, or diminish from, the Grant to the said Cecilius, or be of any Authority to explain the same, if there was any Doubt or Obscurity as to the Limits of the Lands that were thereby granted, and which he humbly apprehends there is not.

Saith the said Grant fully and clearly, as he doubts not to make appear, extends to, and includes, all and every part of the said three Lower Counties of Newcastle, Kent and Sussex.

Doth not know, nor can set forth, whether the said Captain Smith's pretended History and Map of Virginia, had been printed and published some few, or any, or what, number of Years, or how long, before the presenting such Petition of the said Cecilius, then Baron of Baltimore in 1632 to his Majesty King Charles the First, and the issuing such Letters Patent as

aforesaid, or whether the said Captain Smith's said History and Map of Virginia, was then printed or published at all, as pretended by the Bill; though, for ought he knows to the contrary, such Book might be then printed and published, and which he is inclinable to believe it was, from the Date it bears, and the Year in which it purports, upon the Title page, to have been printed and published.

Doth not know, nor hath even heard, save from the Plaintiffs and their Bill, nor hath he any Reason to believe, nor doth he believe, that there was then no other Map or Plan of the said Peninsula or Tract, or the Parts adjacent thereunto done by any Englishman whatsoever extant, nor any History or Description of the same Peninsula or Tracts and Parts adjacent, published, printed, known or used, than the said pretended Book or History and Map of Captain Smith's, as is alledged in and by the Bill: the said Peninsula, and the several Parts adjacent thereto, as he hath been informed and believes, having been discovered, though not inhabited, or settled upon, by Englishman, as well as others of Foreign Nations, many Years before the Grant thereof to the said Cecilius, the Defendant's Ancestor, by his said Majesty King Charles the First as aforesaid, or the time of the pretended printing and publishing of the said Captain Smith's said History; and the Defendant hath now, in his Custody or Power, a Map thereof, much more ancient, as he believes.

Denies that he either knows, or believes, that, according to the express Bounds of the said recited Letters Patent, the Head, or most Northern Parts, of the Lands, thereby granted to the said Cecilius, was to extend only so far as until it subjoined to such part of the Estuary of Delaware, as lay under the 40th Degree of the Northern Latitude, as in and by the Bill is suggested, or that every, or any, part of the Lands which lay under the said 40th Degree, or of such Lands as lay from the 39th Degree compleat to the 40th Degree compleat, were excluded by the said Grant.

On the contrary, the Defendant saith he is advised, and conceives, that, according to the express Bounds of the said recited Letters Patent, the Lands, thereby granted, were to extend, though the 40th Degree compleat, and to the end thereof, and that no part of the Lands under the said 40th Degree were excluded out of the said Grant, or meant or intended so to be, all the Lands under the said 40th Degree being, manifestly, and in Terms, comprehended within the said Grant.

Insists that no such Construction, or Restriction, can, or ought to, be put upon the said Grant, as the Plaintiffs mention and insist upon by their Bill, the same, as he is advised and

conceives, being directly contrary not only to the express Terms, but to the true Intent and Meaning, of the said Letters Patent.

Believes that, from the 39th Degree compleat, to the 40th Degree compleat, is 60 Geometrical Miles or Minutes, or 69 English Statute Miles, as the Plaintiffs compute and state the same by their Bill, and that there is such Quantity or Space of Land lying under the 40th Degree as the Plaintiffs mention, but insists that the whole thereof, and all Lands lying under the said 40th Degree, of what Space or Quantity soever, were granted to the said Cecilius, by the said Letters Patent, and not such Lands, or so far only, as extended or adjoined to the said 40th Degree, as the Plaintiffs unjustly pretend by their Bill.

Denies that he either knows, or believes, that it appears by the Land Marks, Buttals and other Descriptions in the said recited Letters Patent, or by any of them, that no part of the Lands which lay under the 40th Degree was, or was intended to be, granted to the said Cecilius; on the contrary, apprehends and is advised that it manifestly appears, from all and every the Land Marks, Buttals and other Descriptions, contained in the said recited Letters Patent, that all the Lands which lay under the said 40th Degree were, and were intended to be, thereby granted to the said Cecilius.

Denies that he either knows, or believes, or ever heard, save from the Plaintiffs and their Agents, that, at the time of making the before recited Letters Patent to the said Cecilius, such part of the said Peninsula as is for that purpose mentioned and described by the Plaintiffs said Bill, or any part thereof, or any part of the Continent at the Head or North part of the said Peninsula, and which is now called the three Lower Counties of Newcastle, Kent and Sussex, was seated and inhabited by the Swedes and Dutch, or either of them, in manner as in the Plaintiffs Bill is for that purpose set forth and alledged, or in such a manner as that his Majesty was not at the time of the said recited Letters Patent to the said Cecilius seized or possessed thereof, so as to have a good Right and Power to grant the same, as by the Plaintiffs said Bill is most untruly suggested.

Defendant is advised and humbly insists that his said late Majesty had good Right and Power to grant the same, and, that he did, by his said Letters Patent, grant, and did intend to grant, the same, and that the said Cecilius did, by his said Petition, and according to the true Scope, Acceptation and Meaning thereof, petition his Majesty for the same.

Defendant is advised and insists that, from the Words of the said Cecilius's Petition, whereby he prays Leave to transport an English Colony into a certain Country therein after de-

scribed in the Parts of America not then cultivated and planted, though in some Parts thereof inhabited by certain barbarous People, having no Knowledge of Almighty God, and from the particular and exact Bounds, and Limits of the Country therein after set out and described in the said Cecilius's Petition, and the said Letters Patent granted thereupon, which evidently and manifestly takes in and includes the said three Lower Counties of Newcastle, Kent and Sussex, it is undoubtedly plain that the said three Lower Counties were not then known, looked upon, or esteemed, to have been inhabited or planted, or settled upon by any Christians whatever, either English or Foreigners, or by any others than the rude and barbarous Indians, and that the said Cecilius, by his said Petition prayed for a Grant of the said three Lower Counties, and that his Majesty certainly intended to grant the same.

Defendant is advised and conceives that his Majesty had full Power so to do, and was well seized and possessed of the said three Lower Counties, so as to grant the same, and that, if there was any itinerant Dutch or Swedish Traders upon any part of the said three Lower Counties, at the time of his Majesty so granting the same to the said Cecilius, yet, that their being there, could in no manner deprive or take from his Majesty the Power of granting the same, or lessen or diminish the said Grant, and that a few of such Foreigners being there, in Case there were any such, would in no Case make the same be considered as inhabited and cultivated, in such a manner as to impeach or invalidate the said Grant; for, that his Majesty could not be supposed to have any View to secure Possessions to Foreigners, appears from the express Words of the said Grant, it being mentioned and recited to be made for the Enlargement of the English Empire and Dominion; and, as the Limits described in the said Grant clearly take in the said three Lower Counties, the Defendant is advised there can be no pretence of any Deceit on the Crown in obtaining the said Letters Patent, though there should happen to be some few Swedish and Dutch settled upon some small inconsiderable Parts of the said Counties.

Hath heard, and believes it to be true, that, after the said Letters Patent and Grant were made to the said Cecilius as aforesaid, he the said Cecilius, or some of his Defendants, entered upon and took possession of the same Premises so granted, and have ever since continued possessed thereof, save as hereafter is mentioned as to such Parts thereof as the Plaintiffs and their Ancestors have unjustly usurped the Possession of, and to which they now pretend a Right, but, as Defendant is ad-

vised and insists, without the least Manner of Right or Title thereto.

Denies that he either known or believes, or hath ever heard, save from the Plaintiffs or their Dependants, that the said Swedes and Dutch successively possessed and enjoyed for many Years after the Date of the said Letters Patent to the said Cecilius their ancient Settlement on Delaware, as described and mentioned in the Plaintiffs said Bill of Complaint, the said Dutch and Swedes having no such Settlement there (as this Defendant ever heard of, or believes) as is pretended and suggested in and by the Bill, there being but a few of them there (if any) and those but itinerant Traders, who had nothing that could deserve the Name of, or be considered, as a Settlement thereon; or if they were settled there, had no Right to the same, or at least to such Parts only as they were actually settled upon, and as were inhabited by them as aforesaid, which were very small and inconsiderable.

Hath heard, and believes it to be true, that the said Cecilius and his Heirs or Descendants, the Defendant's Ancestors, did set down, and take possession of, Lands, on the Western Side of the said Peninsula above, and more Northwards than, the 39th Degree of Northern Latitude compleat, and even almost to the 40th Degree compleat, of the said Northern Latitude, but is advised and apprehends the same was not so done by them in Deceit and Disinherison of his Majesty, but all such Lands as they so sat down upon, or took possession of, were expressly contained within the Limits and Bounds of the said recited Letters Patent, and for which Seating down and Possession Defendant is advised and insists that the said Cecilius, or his Heirs or Descendants, had a clear and indisputable Right and Title under the said Letters Patent and Charter of Maryland, as before is mentioned.

Denies that he either knows, or ever heard or believes, that the Plaintiffs, or either of them, or any under whom they claim, ever could, or did, make or transfer any legal Title or Right of the said three Lower Counties, or either of them, or of any Part thereof, to any Descendant of the said Cecilius, as is untrue alledged in and by the Bill, or that any Descendant of the said Cecilius ever did or could derive or have any Right or Title thereto from the Plaintiffs, or those under whom they derive, the Plaintiffs or either of them, or those under whom they derive, never having had any Manner of Right or Title to the said three Lower Counties, or either of them, or any Part thereof, to the Knowledge or Belief of this Defendant.

Doth not know, nor ever heard, save from the Bill, nor doth he believe, that the Dutch ever held the said Lands called the three

Lower Counties (which this Defendant hath heard and believe lie on the Western Side of the River of Delaware) as appertaining and belonging to a larger or greater Settlement, upon a large Tract of Land Part of what is generally called New England, and particularly on those Parts now called West New Jersey and East New Jersey and New York on the Eastern Side of Delaware; or, that the said three Counties always went along with the said larger Tract or Settlement, as by the Bill is suggested, or any ways belonged or appertained thereto; but a very inconsiderable Part of the said three Counties (if any) being inhabited or settled upon, at the time the Dutch were in possession of the said Jerseys and New York, and the said three Counties were not, then, looked upon or esteemed, in any manner, to appertain or belong to the said Jerseys or New York.

Neither doth Defendant know, or believe, that it was, or is, absolutely necessary for those who enjoyed the said greater Settlement to have, likewise, the Lands now called the three Lower Counties, for the Reasons in the Bill mentioned, or any other Reasons; nor do the Inhabitants of the said Jerseys or New York make the least Pretence or Claim to the said three Counties, or any Part thereof, to the Knowledge or Belief of this Defendant tho' this Defendant believes it might be advantageous, for those who enjoyed the said greater Settlements, to have, likewise, the said three Lower Counties, if they had any Right to the same.

Hath heard, and believes it to be true, that, in or about the Year 1664, his late Majesty King Charles the Second took from the said Dutch the said great Settlement and Possession of the said Dutch at New York and New Jerseys, on the Eastern Side of the said River of Delaware, and all Lands appertaining to the said great Settlement.

But denies that he either knows, or believes, or ever heard, that the said three Lower Counties were then looked upon, or esteemed, to be Part of, or appertaining to, the said Provinces of New York and New Jerseys, or to be then the Right of, or in the Possession of the Dutch, or that his said late Majesty King Charles the Second, by virtue of such his Conquest from the Dutch became, for the first time, seized and possessed, in Right of his Crown, of the said three Lower Counties; on the contrary, the said three Lower Counties were, as Defendant most assuredly believes, long before that time, the Right of, and belonged to, the Crown of England; the same having been, before that time, granted by his said then Majesty's Royal Father King Charles the First to the said Cecilius Defendant's Great Grandfather, by the said Letters Patent, as aforesaid.

Hath heard, and believes it to be true, that his said late

Majesty King Charles the Second did, by his Letters Patent under the Great Seal of England, bearing Date at Westminster on or about the 12th Day of March, in the 16th Year of his Reign, and in the Year of our Lord 1664, give and grant unto his Brother James then Duke of York, his Heirs and Assigns, very considerable Tracts of Land in New England, with divers Powers of Government over the said County thereby granted, as in the Bill is mentioned; but Defendant, as to the several Tracts of Land and Premises thereby granted to the said James, then Duke of York, craves leave to refer to the said Letters Patent under the Great Seal of England when produced, or the Exemplification or Enrollment thereof, alledged by the Bill to remain of Record in this Honourable Court.

But denies, that he either knows, or believes, that the said Duke of York, by virtue of or under the said last recited Grant and Letters Patent, by his Governors, Deputy-Governors, and other Officers, or otherwise, became and was actually and really, or lawfully and rightfully, seized and possessed of or intitled to the said three Lower Counties of Newcastle, Kent, and Sussex, as belonging or appertaining to the said Provinces of the Jerseys and New York, or either of them, or as Part of, or appertaining to, any of the Premises so granted to him by any of the said Letters Patent of the 12th of March 1664, as is set out and pretended in and by the Bill.

On the contrary, the Defendant hath heard, and believes, that the said Cecilius Lord Baltimore, and others, the Defendant's Ancestors, both before and after the said Year 1664, and from time to time, from the Grant of the said Charter in 1632, until as herein after is mentioned, did and exercised all Acts of Ownership, Proprietorship, and Government, within the said three Lower Counties, as absolute Lords and Proprietors thereof, and that they had a good Right and Title so to do.

Doth not know, or believe, or ever heard, save from the Plaintiffs and their Agents, that the said three Lower Counties were ever in the Possession of the Dutch, or were Dependents upon, or belonging, or appertaining to, the said Great Settlement of the two Jerseys and New York, as by the Bill is suggested.

On the contrary apprehends and believes, the same were always dependent upon, and belouging to the Province of Maryland, and fully comprehended and included within the Limits and Bounds described in the said Charter of Maryland to the said Cecilius the Defendant's Great Grandfather as aforesaid.

And the Defendant insists, that the said Duke of York had no Right to grant the same away to any other Person, as is alledged and pretended by the Bill.

Hath heard, and believes it to be true, that, after his said late Majesty King Charles the Second had made such Grant in 1664, as aforesaid, to the said James Duke of York, a certain Treaty was concluded at Breda, between his said late Majesty King Charles the Second and the States-General, about the time in the Bill for that purpose set forth and mentioned; and that the States-General, by such Treaty, ceded and yielded, to his said late Majesty, all places whereof his said late Majesty had been in Possession on the 10th of May 1667, as in the said Bill is alledged: To which Treaty the Defendant, for his greater Certainty, craves leave to refer.

Hath also heard, and believes, that War was, afterwards, declared between England and Holland, in or about the Year 1672, as in the Bill is set forth.

And that afterwards, and for ought the Defendant knows to the contrary, in or about the Month of July 1673, the Dutch entered into and upon their former said great Settlement, upon the Lands now called West and East New Jersey, and New York; but denies, that he either knows, or believes, or ever heard save from the Plaintiffs and their Agents, that the Dutch likewise, upon or after such Declaration of War in 1673, entered into and upon the Lands now called the three Lower Counties of Newcastle, Kent, and Sussex, as by the Bill is alledged.

Hath heard, and believes, that to the contrary, in or about the Month of February 1673, as by the Bill is alledged, a Treaty of Peace was concluded, between England and Holland, and that, by such Treaty, all Countries, which had been taken by each from the other, since the said last-mentioned War broke out in 1672, were agreed to be restored, by each of the contracting Parties, to the other, from whom the same had been taken: To which Treaty, for greater Certainty, the defendant craves leave to refer.

Heard and believes, that in a very short time after the concluding the said last-mentioned Treaty of February 1673, his said late Majesty King Charles the Second, and the said James Duke of York, sent over Colonel Edmund Andross, afterwards Sir Edmund Andross, Knight, or some other Person or Persons, with Authority to receive from the Dutch the said Settlements of the two Jerseys and New York, and the Government thereof, to continue in the Command thereof under the said James Duke of York.

But denies, that he either knows, or believes, or ever heard, save from the Bill, that the said Colonel Andross was sent over to receive, or did receive, from the Dutch, Possession of the said three Lower Counties of Newcastle, Kent, and Sussex, or any Part thereof, at the time he so received from them their

said Settlement of the Jerseys and New York, as by the Bill is suggested; the same not having, to the Knowledge or Belief of the Defendant, been in the Possession of the Dutch during the War, or delivered by the Dutch to the said Colonel Andross, or been under his Command or Government under his said late Majesty King Charles the Second, and the said James Duke of York, or either of them, by virtue of any Commission or Commissions from them, or either of them, or otherwise howsoever.

Hath heard and believes that, immediately, or soon, after the giving such Commissions and Authority to the said Colonel Andross, the Colonel went over to the New East and West Jerseys and New York, and took Possession thereof, for, and in behalf of the said James Duke of York, and continued in Possession thereof, and under the Authority and in the Behalf of the said James Duke of York, did, for many Years together, exercise all Sorts of Acts of Propriety and Government whatsoever throughout the said Provinces of New East and West Jerseys and New York.

But denies, that he either knows, believes, or ever heard, save from the Bill and from the Plaintiffs and their Agents, that the said Colonel Andross, under the Authority and in the Behalf of the said James Duke of York, or of his said late Majesty King Charles the Second, by virtue of such his Commissions, or otherwise, exercised all, or any, kinds of Acts of Ownership or Government, within the said three Lower Counties of Newcastle, Kent, and Sussex, or either of them, or any Part thereof, or that he was any wise in the Possession of the same, or had any Right thereto by virtue of his said Commission under the Crown, or the Duke of York, or otherwise, however, the Right thereto, as the Defendant is advised and insists, being in the Defendant's said Ancestors, under the said Letters Patent, as aforesaid.

Hath heard, and believes it may be true, that his said late Majesty King Charles the Second, in order to make unto the said Duke of York a clear Title to the said Countries which had been before granted to him in 1664, as aforesaid, by his Letters Patent, under the Great Seal of England, bearing Date at Westminster on or about the 29th Day of June, which was in the Year of our Lord 1674, did give and grant, unto the said James Duke of York, his Heirs and Assigns the same Territories which were granted by the said former Letters Patent: and did thereby give and grant unto the said James Duke of York, in Fee, divers Powers of Government over the said Country and Territory thereby granted, as in the Bill is for that purpose set forth: but for his greater Certainty therein craves leave to refer to the said Letters Patent, when produced by the Plaintiffs

under the Great Seal of England, or to the Exemplification, or Enrollment thereof, alledged by the Plaintiffs to remain as of Record in this Court.

Denies that he either knows, or believes that the said three Lower Counties of Newcastle, Kent, and Sussex, or any part thereof, were included in the said last mentioned Letters Patent to the Duke of York of 1674, or that any Interest therein, or Right thereto, passed to the said Duke of York, by virtue of the said recited Letters Patent, the same being, as the Defendant apprehends, and believes, no new Grant of any other Lands than what were before included in the said former Letters Patent to the Duke of York of 1664, but only a Confirmation of the very same Lands included in the said former Grant; which said former Grant or Letters Patent to the Duke of York no ways extended, as the Defendant is advised, and insists, to the said three Lower Counties of Newcastle, Kent, and Sussex, or either of them, or any Part thereof.

Hath heard and believes, that the Plaintiffs late Father, about the time in the Bill for that purpose mentioned, petitioned his late Majesty King Charles the Second to grant him Letters Patent for a Tract of Land in America, as in the Plaintiffs Bill is for that purpose set forth; but having never seen the said original Petition, and knowing nothing thereof of his own Knowledge, must therefore crave Leave for his greater Certainty, as to the Contents of the Plaintiffs Father's said Petition, to refer to the said Petition itself, when produced.

Doth not know, nor ever heard, save from the Plaintiffs Bill and from them and their Agents, and therefore cannot set forth, either as to his Knowledge or Belief, whether the Plaintiffs late Father was, or was not, about the time in the Bill for that purpose mentioned, or at any other time, called in by the Lords of the Committee of his said late Majesty's most Honourable Privy Council for the Affairs of Trade and Plantations, to whose Consideration the said Petition (as the Plaintiffs alledge by their said Bill) had been referred, as in the Plaintiffs Bill is set forth; nor whether the Plaintiffs said late Father was, or was not, then asked such Questions, or whether he did, or did not, make such Answer thereto, as in the Plaintiffs Bill is for that purpose particularly set forth and alledged; nor what was done or transacted thereon, nor what Proceedings were had relating thereto, the Defendant knowing thereof himself, but must refer the Plaintiffs to the Minutes and Orders of the said Privy Council, and Lords of Trade, for the same, the Defendant being an entire Stranger thereto, otherwise than may appear by such Orders and Minutes.

Hath heard and believes, that, pursuant to the Advice and

Reports of the Lords of his said late Majesty's most Honourable Privy Council, and by Letters Patent under the Great Seal of England, of such Date as in the Bill is for that purpose mentioned, his said late Majesty did give and grant, unto William Penn, Esq; the Plaintiffs said late Father, his Heirs and Assigns, a Tract of Land in America, with divers Powers of Government; and that, by the same Letters Patent, the said Country was erected into a Province, and called Pensilvania; but the Defendant, for his greater Certainty, as to the proper Bounds, and Limits, and Dimensions of the said Tract of Land, so granted by the said Letters Patent to the Plaintiffs said Father, and called Pensilvania, begs leave to refer to the said last mentioned Letters Patent under the Great Seal of England, when produced by the Plaintiffs.

[HERE HE SWEARS THE LOWER COUNTIES TO BE ON
THE OTHER SIDE OF DELAWARE!]

But is advised and insists that the said last-mentioned Letters Patent no ways granted, or gave, to the Plaintiff's late Father the said three Lower Counties of Newcastle, Kent, and Sussex, or either of them, or any Part of them; the said Province of Pensilvania, being entirely in the West Side of Delaware River, and the said three Counties being on the East Side of the said River, and no ways included in the said last mentioned Letters Patent.

Denies that he either knows, or believes, or ever heard, that the Lords of his said late Majesty's Privy Council thought the Consent of the said Duke of York necessary before the said Grant of Pensilvania passed the Great Seal, for the Reasons in the Bill for that purpose mentioned; or particularly in respect of the said three Lower Counties of Newcastle, Kent, and Sussex, or that the said Duke of York's Assent to the said Grant was, accordingly, for that reason, had and given to the Right Honourable the Lords of the Committee of Plantations, or before a Committee of the Privy Council of his said late Majesty King Charles the Second, as by the said Bill is suggested.

[HERE HE SWEARS PENSILVANIA CONTIGUOUS TO
NEW JERSEY AND NEW YORK, THO' IN FACT THE
RIVER DELAWARE IS BETWEEN THEM!]

But hath heard, and believes it to be true, that the said Duke of York's Assent was had to the said Grant, and that the said Lords of the Council thought such Assent necessary to the said Grant of Pensilvania, before they passed the same, in regard that, as this Defendant believes, their Lordships might be apprized that the Provinces of New East and West

Jersey and New York, which were then in the Possession of the said Duke of York, were contiguous to the said Tract of Land so passed by the said Grant, and intended to be erected into the said Province of Pensilvania, and therefore, their Lordships were in some doubt whether it might not infringe upon the said other Grant of the other Provinces of the Duke of York, called New East and West Jersey and New York, and for that reason, and that reason only, as the Defendant hath heard and believes, and not particularly, or at all, with respect to the said three Lower Counties of Newcastle, Kent, and Sussex, their Lordships thought it necessary to have the said Duke of York's Assent to the said Grant, before it passed the Great Seal.

Hath heard, and believes it may be true, that the said William Penn the Plaintiffs late Father, after obtaining the said Grant of Pensilvania, and to take away all manner of Objections thereto from the said Duke of York, or any Claiming under the Duke, did make Interest and prevail upon the said Duke of York to confirm the same; and that the said Duke of York, afterwards, by Indenture dated on or about the 21st of August 1682, and made between such Parties as in the Bill are for that purpose mentioned, did remise, release and for ever quit claim, unto the said William Penn, his Heirs and Assignes, all his the said Duke of York's Right, Title and Interest, whatsoever, to the said Tract of Land and Premises, before granted by the said Letters Patent of the 4th of March 1680, To hold to the said William Penn, his Heirs and Assigns, for ever; but the Defendant craves leave, for his greater Certainty, to refer to such Indenture when produced.

Doth not know, but hath heard, that, soon after the Grant was made by the said King Charles the Second of the said Province of Pensilvania, and confirmed by the said Duke of York unto the Plaintiffs late Father as aforesaid, the said James Duke of York did make and execute two several Indentures of Feoffment, of the 24th of August 1682, to the Plaintiffs Father William Penn, as in the Bill is for that purpose particularly set forth and mentioned; and that there might be such Covenant therein, on behalf of the said Duke of York, and such Power for Livery and Seisin, as in the Bill are mentiond; but the Defendant, knowing nothing thereof of his own Knowledge, or otherwise than by Information, for his greater Certainty as to the Contents of the two last mentioned Indentures of Feoffment, and the Premises thereby intended to be enfeoffed to the said William Penn, begs leave to refer to the said Indentures of Feoffment when produced.

But denies that he either knows or believes, that any Right to, or Interest in, the said three Lower Counties of Newcastle,

Kent, and Sussex, or either of them, or any Part of them, passed, or could pass, to the said William Penn the Plaintiffs late Father, by virtue of, or under, the said pretended Indentures of Feoffment, or either of them from the said Duke of York; the said Duke of York having no manner of Right or Title thereto himself, under either of his Grants from the Crown before-mentioned.

Hath heard, and believes it to be true, that the said Duke of York was so sensible he had no manner of Right or Title to the said three Lower Counties, or either of them; and that his said Grants and pretended Feoffments to the Plaintiff's late Father in 1682, (if any such Feoffments there really and in fact were) were of no Validity or Force, with respect to the said three Lower Counties of Newcastle, Kent, and Sussex, that the said Duke of York, soon afterwards, in the Year 1683, obtained a Warrant from his late Majesty King Charles the Second for passing a Patent, whereby the said three Lower Counties were intended to have been granted to the said Duke of York; and that a Copy of a Bill was afterwards prepared by his Majesty's then Attorney-General for that purpose; but the same, as the Defendant hath heard and believes, was never passed into a Grant; for that the then Lord Baltimore, having notice thereof, presented a Petition to his Majesty, in opposition to the passing the said Bill under the Great Seal, and praying the same might not pass till his Majesty should be satisfied of the said Letters Patent formerly granted to Cecilius Lord Baltimore, as afore-said, wherein the said three Counties of Newcastle, Kent, and Sussex, were comprized; which as this Defendant hath heard and believes prevented the passing the said Bill into a Grant of the said three Lower Counties to the said Duke of York.

And this Application of the said Duke to the Crown for a Grant of the said three Counties in 1683, is the strongest Evidence, as the Defendant is advised, and insists, that it was then apprehended the Duke had no manner of Right or Title thereto, and the not passing the said Bill into a Grant, upon the Lord Baltimore's Petition against the same, shews the Sense of the Crown to be so at that time.

Knows nothing of the Plaintiffs late Father William Penn having taken Possession in Form, of the Premises contained in the said respective pretended Indentures of Feoffment, or of any Tenants of the said Premises, attorning to him, at the time, or in the manner, as by the Bill is suggested, or at any other time, or in any other manner, whatsoever; but, if the Fact really was so, and that the Plaintiffs late Father did really take Possession of the said Premises in the manner as by the Bill is pretended, which the Defendant neither knows or

believes, yet, the Defendant is advised and insists his so doing was a Wrong and Injury done to the Defendant's said late Ancestor, the then Lord Baltimore, and an Infringement upon his Right and the Lands granted to him by the said Charter of Maryland, and that the Plaintiffs late Father had no manner of Right so to do; and that the Plaintiffs ought not, now, to be permitted in a Court of Equity, to make use of the Injustice and Injury their late Father committed against the Defendant's said Ancestor, to support their Pretensions to what they have no manner of Right to.

Knows nothing of the pretended Proclamation by the Plaintiffs Bill, set forth to have been made by the Governor and Council of NewYork, in favour of the Plaintiffs late Father, and in support of the said two Indentures of Feoffment from the Duke of York in 1682, and must, therefore, leave the Plaintiffs to make such proof thereof as they shall be able, or advised.

But is advised, and insists, that such Proclamation (if any such really was made) could no ways impeach the said Charter of Maryland, or the said Letters Patent to the said Cecilius in 1632, or take away any Right the Defendant or his said Ancestors had to any Lands under the same.

Believes the said three Counties of Newcastle, Kent, and Sussex, may be comprized and included within the Bounds and Descriptions of the said Indentures of Feoffment of 1682, but the Defendant is advised, and humbly insists, the Plaintiffs can have no right to the said three Counties, or any Part of them, under the said Indentures of Feoffment, or otherwise, for the Reasons herein before particularly mentioned; and particularly for that the said Duke of York, at the time of his making the said Feoffment, if any such Feoffments were made, had no manner of Right to the said Counties, or either of them, or any Part thereof.

Hath heard, and believes it may be true, that the Plaintiffs late Father might enter into the peaceable Possession of the said Province of Pensylvania about the time in the Bill for that purpose mentioned; but denies that he either knows, or believes, or ever heard that the said William Penn, at or about the time in the Bill for that purpose mentioned, or at any other time, whatsoever, entered into the peaceable Possession of the said three lower Counties, as Proprietor thereof, as in the Bill is untrinely suggested, or that he had any right so to do, or that the said William Penn, or those claiming under him, now are, or ever were Proprietors thereof, or ever in the Possession thereof as such, or had any Right or Title thereto, whatsoever.

But hath heard and believes that, there being a Dispute, between the Crown and the Defendant's Ancestor, touching the

Right to the said three Lower Counties, and the Defendant's Ancestors having been under some supposed legal Disabilities, whereby they were restrained from exercising any Acts of Government, and these three Counties not being of Extent and Riches enough to maintain a Governor of themselves, separately and independent of any other Province, the Governors of Pennsylvania, for the time being, for many Years past, have been permitted to have the Government, and to exercise a Jurisdiction, over the said three Counties; but notwithstanding such Permission the said Counties were never, to the Knowledge or Belief of the Defendant, look'd upon as Part of Pennsylvania, or that the Plaintiffs, or any of their Ancestors, had any Right or Title thereto: and, as an Evidence of this, the Defendant hath been informed and believes, and doubts not but it will appear, that the Plaintiffs and their Ancestors have, always, from time to time, upon his Majesty's approving of a Governor for their said Province of Pennsylvania and the said three Lower Counties, signed a Declaration in Writing, declaring that his Majesty's Royal Approbation and Allowance of such Governor of Pennsylvania, to be at the same time Governor of the said three Lower Counties upon Delaware River, should not, in any manner, be construed to establish any Right in them to the said three Lower Counties, or to diminish or set aside the Right claimed by the Crown thereto.

So that the Defendant apprehends, and is advised that it appears from this Declaration of their late Father, and themselves, from time to time, that he and they was and were sensible, he and they had no Right to the said three Lower Counties, but that he and they, and the Deputy-Governor of the said Province of Pennsylvania under him and them, held the Government of the said three Lower Counties in Trust only for the Crown, or of such other as should make out a Title to the same under the Crown.

Defendant doth not know, or believe, or ever heard, that the Plaintiffs, or their Father, ever received Quit-Rents from the Inhabitants of the said three Counties as Proprietors thereof, but, however that might be, the Defendant is advised and insists that any illegal, or usurped, Possession of their's of the said three Lower Counties, or any Part of them, can in no wise support their Pretended Right or Title, thereto, as the same are clearly comprized within the Limits and Bounds described in the said Charter of Maryland granted to the Defendants said Ancestor Cecilius, as aforesaid.

But the Defendant apprehends the original Right, to the said three Counties, cannot be drawn into Question in this Suit, and therefore the Defendant apprehends and is advised all these

Parts of the Bill, relating to the Grants from the Crown and the Duke of York, might have been very well omitted out of the Plaintiffs Bill.

Denies that he either knows, or believes, or ever heard, save from the Plaintiffs Bill, that the Plaintiffs late Father William Penn, at his own Charge, peopled and settled the said three Lower Counties of Newcastle, Kent, and Sussex, or that the Plaintiffs, or their said late Father, have been at the Expence of 60,000*l.* Sterling in peopling, settling and improving the same, as is pretended by the Bill, or that they have been at any Expence at all on that Account, to the Knowledge or Belief of the Defendant: for, on the contrary, the Defendant hath heard, and believes it to be true, that the Plaintiffs late Father was not at the Charge or Expence of peopling or settling the Province of Pensilvania, but that the settling and improving, even of that Province, was begun and carried on to the Expence, Hazard and Industry of divers People who purchased, at first, a very considerable Tract of Land from the Plaintiffs late Father, to the amount of 600,000 Acres, and were at the Trouble, Hazard and Expence of settling, peopling and cultivating the same, and paid the said Wiliam Penn a considerable Consideration for such Purchase; by which the Plaintiffs said Father was an immediate Gainer by the first settling and peopling the said Province of Pensilvania, and was not at the Hazard or Expence thereof himself: And, as this was the Method the Plaintiffs late Father took, in settling and peopling the said Province of Pensilvania, to which he had, as the Defendant believes, a Right, is very improbable to imagine he should be at any Expence in settling, peopling, or improving the said Lower Counties of Newcastle, Kent and Sussex, or either of them, or any part of them, to which he must, as the Defendant apprehends, know he had no manner of Right or Title.

Saith that if the said three Lower Counties of Newcastle, Kent and Sussex were part of, or appertaining to, the said Province of Pensilvania, which however he insists they are not, he believes they, together, would not make one of the most considerable and populous Provinces or Colonies for the Age thereof in America.

And, for ought the Defendant knows to the contrary, the Number of Souls, in the said three Lower Counties only, exclusive of Pensilvania, may be esteemed to be 40,000, or near that Number. But denies that when he lately came out of the said Province of Maryland into the said three Lower Counties, he was at all surprized, as is suggested by the Bill, to see how much thicker of Inhabitants, or of beautiful Plantations, the said three lower Counties were, than the said Province of Mary-

land was; neither, in Fact, are there, to the best of the Defendant's Judgment and Belief, more beautiful Plantations in the said three Lower Counties than in the other Parts of the Defendant's said Province of Maryland; nor are the same thicker of Inhabitants, as the Plaintiffs suggest.

Knows nothing of the subsequent Letters Patent, in the said Bill alledged to have been obtained by the said Duke of York from his said late Majesty King Charles the Second, dated the 22d of March 1682, nor ever heard of the same, or of such Letters Patent having been obtained or granted, save from the Plaintiffs, and doth not believe there are any such, and must, therefore, refer to the same, if any such were granted, under the Great Seal of England, when produced by the Plaintiffs; but, if such Letters Patent, as are last mentioned, were obtained by the said Duke of York, and granted by his said late Majesty, as the Plaintiffs suggest, yet, the Defendant denies that he either knows, or believes, that the same were so obtained or granted in Trust for the Plaintiffs late Father, or in Pursuance or Performance of any the Covenants in the said pretended Indentures of Feoffment from the said Duke of York to the Plaintiffs said Father, or that the said Duke of York delivered the said Letters Patent under the Great Seal to the Plaintiffs Father immediately or at any time to the Plaintiffs Father, as is pretended by the Bill; but the Defendant is advised and insists that the said last mentioned Letters Patent, if obtained by the said Duke of York, as by the Bill is suggested (but which this Defendant doth not believe) could not any way divest the Defendant, or any of his Ancestors, of the Right they had to the said three Lower Counties, or either of them, under their Original Charter of Maryland, from the Crown in 1632, such Letters Patent being long Subsequent in time to the said Charter.

Hath heard, and believes it to be true, that the said Duke of York, about the time in the Bill mentioned, was soliciting and endeavouring to procure from the Crown a further Grant of the three Lower Counties of Newcastle, Kent and Sussex, and that, before such Grant passed the Great Seal, it was stopt, upon a Petition presented to his late Majesty King Charles the Second, on behalf of the said Lord Baltimore, the Defendant's Ancestor and in support of his Right and Claim to the said three Lower Counties, as in the Bill is also for that purpose mentioned, and as herein before is mentioned and set forth.

But denies that he either knows, or believes, that the said Duke of York so solicited such further Grant of the said three Counties in pursuance of any Covenants with the Plaintiffs said late Father, as is pretended by the Bill, or that the Duke of York, in case he had procured such further Grant, intended

it for the Benefit of the Plaintiffs late Father, but for his own Use and Benefit.

Hath heard, and believes it to be true, that such last mentioned Petition, on behalf of the said then Lord Baltimore, having been presented to his Majesty, was, by his Majesty's Order in Council of such Date as in the Bill is set forth, referred to the Consideration of the then Committee of Trade and Plantations, (and which Committee the Defendant believes did then consist of such of the Lords of his said Majesty's Most Honorable Privy Council as charged by the Bill.)

Hath likewise heard, and believes it to be true, that the said then Lord Baltimore was, by himself or Council, heard thereon, touching his Right and Title to the Land and Soil of the said three Lower Counties.

But denies that he either knows, or believes, or ever heard, save from the Plaintiffs, that the Plaintiffs late Father was divers, or at any time, heard before the said Committee in his own Right, or touching any Right pretended to be in him to the said three Counties, or either of them, or any part of them; nor did the Plaintiffs late Father then, as the Defendant either heard of, or believes, pretend, or insist upon, any Right in himself to the said three Lower Counties, or either or them, before the said Committee, but appeared, upon that occasion, as Agent only for and on the behalf of the said Duke of York, and to support the Duke of York's Pretensions to the said three Counties against the then Lord Baltimore, and not under the Pretence of any Right in himself.

Denies that he either knows, or believes, that it appears any otherwise, by the Register Books, or any of the Proceedings of the said Committee of Council or Committee of Trade and Foreign Plantations; or that, in the Prosecution of the said Suit, it is from time to time continually taken notice of, or expressly mentioned in the Minutes or several Orders made by the said Committee thereon, that the then Dispute and Difference was a Dispute between the then Lord Baltimore and the Plaintiffs said Father, although the Plaintiffs Father did some time make Use of the said Duke of York's Name therein, as holding under the Grants and Covenants for further Assurance of the said Duke of York, as is alledged in and by the Bill; but on the contrary, the Defendant apprehends, and doubts not but that it will appear from the said Register Books, and all the several Proceedings throughout the Prosecution of the said Dispute, from the beginning to the end thereof, that the Duke of York himself, by his Council, and other Agents, did assist and interpose in the said Suit against the then Lord Baltimore's Claim to the said three Lower Counties, and that the Plain-

tiffs said Father was no ways concerned, or acted, therein, otherwise than as Agent to the said Duke of York, or that any of the said Proceedings before the said Committee declare, or so much as even Tacitely, or otherwise imply, or tend to shew, that the Grant of the three Lower Counties, which the Duke of York had obtained from the Crown after the said pretended Feoffment to the Plaintiffs late Father, or such further Grant which he was then solliciting to obtain, or either of them, were in Trust for, or for the Benefit of, the Plaintiffs late Father, as is pretended and suggested in and by the Bill.

Doth not know, nor can set forth, whether there were, or were not, such several Minutes, Orders and Reports, of such particular and respective Dates, made by the said Committee of Council, upon, and during the Continuance of, the said Dispute, as in the Bill are particularly set forth and mentioned, the Defendant not having examined the Council Books, or compared the respective Dates, in the Bill mentioned, with the Entries thereof in such Books; nor does he apprehend it at all Incumbent on him so to do, but begs to refer to the Council Books themselves when produced as to the several and particular Orders, Reports and Minutes that were so made by the said Committee pending such Dispute as aforesaid.

Hath heard, and believes it to be true, such final Order in Council, and of such Date, was made, upon the said Dispute, touching the Right to the said three Lower Counties, between the then Lord Baltimore, and the Crown, as in the Bill is for that purpose set forth, but, for his greater Certainty therein, craves leave to refer to the said Original Order itself, or to the Entry or Minute thereof in the said Council Books when produced.

Saith he is advised and insists that the said last mentioned Order in Council is so far from being an Evidence of any Right in the Plaintiffs, or their said late Father, to the said three Lower Counties, that it makes no manner of mention of any Right pretended thereto by the Plaintiffs late Father, and the Division thereby directed of the said three Lower Counties is only between his then Majesty and the then Lord Baltimore.

And the Defendant is advised and apprehends and insist that the said last mentioned Order in Council in 1685, could no ways legally deprive the Defendant, or his Ancestors, of the Right they had to the said three Lower Counties under their Original Charter in 1632 from the Crown, which was granted upwards of 50 Years before the making of that Order in Council; and which the Defendant is likewise advised and insists was inconsistent with two former Orders in Council, of the 3d of July 1633, and of the 4th of April 1638.

And apprehends the said Orders in 1633 and 1638 ought to have the greater regard paid to them, because it is much more likely that the Intention of the Crown should be more clearly known in 1633 and 1638, so soon after the granting the said Charter of Maryland, as to the Lands comprized in such Charter, than upon a Dispute, afterwards, so many Years, as in 1685.

Saith, for ought the Defendant knows to the contrary, it may be true that, during the said Contest in the Years 1683, 1684 and 1685, the then Lord Baltimore might produce to the then Committee of Trade and Plantations, a Copy of the said Order of the Committee of Foreign Plantations, dated the 4th of April 1638 herein before mentioned, in order to shew that former Board's Opinion touching the said Lord Baltimore's Right to the said three Counties, but the Defendant knoweth nothing thereof of his own Knowledge; and the Defendant is an entire Stranger to the Charge in the Bill, that such Copy was not an attested Office Copy, and that, therefore, the Board refused to admit of the same as Evidence, or that they gave the said Lord Baltimore time to procure an authentick and attested Copy thereof, or that he afterwards declared to the said Board that he could not find the Original, whereby an attested Copy might be procured; but, in case the Fact was so, which the Defendant neither knows or believes, it cannot, as the Defendant apprehends, considering all the Circumstances, throw any Imputation upon the Reality of the said Order made so many Years before; but the Defendant assuredly believes such Order was made, and the Copy thereof, produced by the said Lord Baltimore on the aforesaid Occasion, (in Case any such was produced) was a true and exact Copy thereof, and that the same was not any fictitious Paper drawn up to serve that, or any other, particular Purpose, as is most unreasonably insinuated in and by the Bill.

Saith such Orders are, as the Defendant verily believes, now remaining amongst the Office Books and Papers at and belonging to the Office of Trade and Plantations at Witehall, where the Plaintiffs or their Agents may, if they please, peruse and inspect the same, and where the Defendant is informed, and believes, the Plaintiffs Sollicitor in this Cause hath perused and inspected the same, and had Copies thereof.

Believes that the Plaintiffs Father had not made any very large, or very expensive Improvements in the said three Lower Counties, before the time of the said last mentioned Order of Council of November 1685 was made, nor doth know or believe that the Plaintiffs, said late Father, or the Plaintiffs, even at this Day, and to this Hour, have made any large or expensive Improvements in the said three Counties, or either of them.

or that they, or either of them, have been at any Expence in settling, improving, cultivating, or peopling the said three Counties, or either of them, or any part of them or that they ever Mortgaged their Estate in England, or America, for that purpose, or that they have ruined, or distressed, or any ways impoverished, their Family, by that means, as is suggested in the Bill.

But believes that the Plaintiffs late Father, and the Plaintiffs since his Decease, may have been at some Expence, but to what amount cannot say or set forth, either as to his Knowledge, or Belief, in making Presents to, and Treating with, the Neighbouring Indians, or the Indians inhabiting near the said three Lower Counties, and which the Defendant apprehends it was necessary for them to do in order to support and promote their Trade with the Indians, and to keep up a good Correspondence with them as they are Proprietors of Pensilvania; but denies that he either knows, or believes, that they were at any such Expence on Account of the said three Lower Counties, the same being wholly, as the Defendant believes, on Account of their own Province of Pensilvania, which Borders upon or Adjoins to the said Counties.

Verily believes that the Plaintiffs, or their said late Father, would not have been at any such Expence, or at any Expence at all, for the Benefit or Protection of the said three lower Counties, or the Inhabitants thereof, or for the promoting their Trade, and that all the Expences they were, or ever have been at, was for the Benefit, Safety, Promotion and Improvement of the said Province of Pensilvania only, and not of the said three lower Counties, or either of them.

Doth not know, but believes it may be true, that the Plaintiffs, or their late Father, may have Mortgaged their Lands in America, or their said Province of Pensilvania, but not for the Purposes or Reasons in the Bill suggested, and denies that he either knows, or believes, that they, or either of them, did, or could Mortgage the Lands of the said three Lower Counties, or either of them, or that any one would accept of a Mortgage of the same, or lend them any Money thereon, in regard, as the Defendant believes, they have no manner of Right thereto, and could not make the same a proper Security, or any security at all, for any Money that might be advanced them thereon.

Doth not know, nor can set forth, either as to his Knowledge, or Belief, whether most part of the Lands in the said three Lower Counties are taken up and cleared, as by the Bill is suggested, or what particular Part or Quantity of the said Lands in the said three Lower Counties are taken up and cleared, or what Number of Plantations there may be thereon: but believes

that that there are many Towns, Villages, Churches, Meetings, Court-Houses, Assembly-Houses, Harbours, Piers, Dwelling-Houses, and other publick and private Structures, Buildings, Edifices and Improvements built and made therein.

But denies that he either knows, or believes, or ever heard, save from the Plaintiffs and their Agents, that all this has been done, or that the said three Counties have been thus improved, by the great and continual Pains, Labour and Industry, or by the many repeated Toils and Hazards, of the Plaintiffs said late Father, or of the Plaintiffs, or either of them: on the contrary, hath been credibly informed, and believes, that the said Counties were first settled and improved at the Expence, and by the Care and Industry of, the Defendant's Ancestors, Proprietors of Maryland, and Inhabitants of the said Counties themselves, and not of the Plaintiffs late Father, or the Plaintiffs, who were at no Expence therein to the Knowledge, or Belief, of the Defendant.

Knows nothing of any Purchases, made by the Swedes and Dutch, of any Tracts of Land within the said three Lower Counties, from the Indian Natives, Owners and Possessors of such Lands, for valuable Considerations, or otherwise, as pretended by the Bill, nor knows, or believes that any Right, to any such Lands, within the said three Lower Counties, did, or could, pass to, or vest in, the Plaintiffs said Father, under or by Vertue of such pretended Purchases from the Indians by the Swedes and Dutch.

Neither knows any thing of any Purchases, by the Bill pretended to have been made by the Plaintiffs late Father, of the Indians, Natives and Owners of any of the Lands comprized within the Limits of the said three Lower Counties, or of any Conveyance to the Plaintiffs late Father of any such Lands, as is suggested by the Bill, and, therefore, must refer to such Conveyances (if any such there were) when produced by the Plaintiffs and to such Proof thereof as they can make of the due Execution thereof, or paying any Consideration for the same.

But is advised and insists the Plaintiffs, or their late Father, can, or could, have no manner of Right, to any part of the Lands within the said three Lower Counties, under, or by Vertue of, any such pretended Purchases or Conveyances from the Indians, if any such there really were, and that the Defendant's Right or Title thereto, under the said Original Charter of Maryland in 1632, can in no wise be affected thereby.

Doth not know, nor can set forth, whether the Lands, comprized in the said pretended Deeds or Conveyances to the Plaintiffs Father from the Indians (if any such there be) do, or do not, of themselves, make up three fourths of all the Lands within the

said three Lower Counties, or whether the other parts of the same three Counties have, or have not, been heretofore purchased by the Swedes and Dutch, the Defendant knowing nothing of such pretended Purchases from the Indians, or of the Conveyances by which the same are pretended to have been assured to the Plaintiffs, or the said Dutch and Swedes, or of the particular Lands comprized therein, or otherwise than from the Allegations of the Plaintiffs Bill, by which the Defendant apprehends it is impossible for him, or any one else, to form any judgment, or Belief, concerning the same, the Description, made use of in the said pretended Purchase-Deed from the Indians, of the Lands thereby pretended to be passed, as set out by the Bill, being no other but, as far as a man can ride with a Horse in two days, and which may be more, or less, according to the goodness of the Horse or ability of the Rider, and is, as the Defendant apprehends, so uncertain a Description as can in no wise enable the Defendant to answer the Plaintiffs particular Charges relating thereto; nor is it any ways material, as the Defendant is advised and apprehends, to the Matters in Question between the Defendant and the Plaintiffs whether the said pretended Conveyances from the Indians contain the whole, three Fourths, or any other particular Quantity, or part, of the said three Lower Counties?

Denies that, to the Knowledge or Belief of this Defendant, any of his Ancestors knew of any such pretended Purchases of the Plaintiffs, or their late Father, from the Indians, or of their peopling, settling or improving the said three Lower Counties as suggested by the Bill, and, therefore, could not be said to have suffered the Plaintiffs Father to go on peaceably and quietly without the least Claim or Interruption whatsoever, to make such pretended Purchases, or to people, cultivate or improve the said three Lower Counties, after the said order in Council of 1685, as is alledged in and by the Bill, the Plaintiffs said Father never having made any such Improvements, or peopled or settled the said three Lower Counties, or either of them, or any part of them, in the manner as is alledged by the Bill, to the knowledge or belief of this Defendant.

Doth not know, but believes it may be true, that the Defendant's Ancestor, and, as the Defendant believes, the same Lord Baltimore as in the Bill is for that purpose named, presented a petition to her late Majesty Queen Anne, in January 1708, and that such Petition, for ought the Defendant knows to the contrary, might be to the Effect in the Bill set forth; but the Defendant, not knowing the same of his own Knowledge, craves leave to refer to the said Petition, itself, when produced.

Likewise believes that such last mentioned Petition was referred, by her late Majesty, to the Consideration of the then Lords Commissioners for Trade and Plantations, about the time in the Bill for that purpose mentioned.

Doth not know, but hath heard and believes, that the Plaintiffs late Father, about the time in the Bill for that purpose mentioned, presented his Petition to her said late Majesty, in opposition to the said other Petition of the then Lord Baltimore and praying that the same might be dismissed, and, for ought this Defendant knows to the contrary, such Petition of the Plaintiffs late Father might be to the Effect in the Bill, but this Defendant, knowing nothing thereof of his own Knowledge, craves Leave to refer to the said Original Petition, when produced.

Saith, that for ought he knows to the contrary, such Order might be afterwards made by her Majesty in Council on the said last mentioned two Petitions, as in the Bill is set forth and mentioned, but, knowing nothing thereof of his own Knowledge, craves Leave to refer to the said Order in Council, if any such there be, or the Entry thereof in the Council Books, when produced.

Saith, he doth not know of his own Knowledge, but, for ought this Defendant knows to the contrary, it may be true, that such further Application, and such other Petition, was afterwards made and presented, in 1709, by the then Lord Baltimore, and such Orders made by her late Majesty in Council thereon, as in and by the Bill for that purpose set forth and mentioned, but, knowing nothing thereof of his own Knowledge, craves Leave to refer to the said Petition and Orders, or the Entry thereof in the Council Books, when produced.

Denies that he either knows or believes that the Plaintiffs late Father, afterwards, or at any time during his Life, was or remained in quiet and peaceable Possession of the said three Lower Counties, or either of them, or any part of them, in his own Right, as pretended by the Bill, or otherwise than as aforesaid.

Hath heard, and believes it to be true, that the Plaintiffs Father departed this Life about the time in the Bill, and, for ought this Defendant knows to the contrary, he might before such his Decease, duly make and execute his last Will and Testament in Writing, of such purport, and to such Effect, as in the Bill is particularly set forth.

And that the Plaintiffs Mother might, afterwards, prove the same, in the manner in the Bill mentioned, but this Defendant knowing nothing thereof of his own Knowledge, must refer to such Will, when produced, and such other Evidence as the Plaintiffs shall think fit to make concerning the same.

Never heard of the Deed-Poll, or Appointments, by the Plaintiffs said Bill set forth to have been made and executed by Hannah Penn, the Plaintiffs Mother, in pursuance of the Power she had or was invested with by the Will of the Plaintiffs late Father, or of the several Allotments or Divisions thereby alledged to have been made by her of the Premises in the Bill for that purpose mentioned, amongst the Plaintiffs, otherwise than by the Bill, and the same, as he believes, being in the Plaintiffs Custody or Power, he must therefore crave Leave to refer to the said Deed-Poll, or Appointment, when produced.

Hath heard, and believes it to be true, that the Plaintiffs said Mother Hannah Penn, departed this Life, about the time in the Bill for that purpose mentioned, and that Dennis Penn her Son, in the Bill named, might also die, an Infant, and without Issue, about the time as therein is mentioned.

Hath heard of the Indentures of Lease and Release, alledged by the Bill to have been made and executed by the Surviving Trustees of the last Will and Testament of the Plaintiffs late Father, pursuant to the Directions in the Appointment alledged to have been made by the said Hannah Penn, but, as to the Contents thereof, must refer to the same, when produced by the Plaintiffs, being an entire Stranger thereto.

Knows nothing of the pretended Mortgage by the Plaintiffs Bill alledged to have been made by their said Father William Penn, to Joshua Gee, John Woods, and others, for the Sum of 6600l. or any other Sum, or of the said pretended Mortgage having lain at Interest for above 20 Years, as by the Bill is suggested, or for any other Number of Years or Time, or of the Reconveyance pretended to have been made thereof by the Mortgages in 1729, neither did this Defendant ever hear thereof, save from the Bill, and from their Agents, and therefore must refer himself to the said Mortgage and Reconveyance, if any such ever were, when produced by the Plaintiffs.

Denies that he either knows, or believes, or ever heard, save from the Bill, that the Plaintiffs upon their said Mother's decease, or at any time whatsoever, either entered into, or are now, in Possession of the said three Lower Counties or, either of them, or any part of them, or of all or any of the Lands, Tenements or Hereditaments therein, under or by Vertue of the said pretended Will, Appointment, Conveyance, Mortgage, and Reconveyance, as by the Bill is untruly suggested, nor doth know or believe that the Plaintiffs, or either of them, have any Right or Title thereto undersuch pretended Will, Appointment, Conveyance, Mortgage, or Reconveyance, or otherwise howsoever.

Denies that he either knows or believes that the said Hannah Penn, after the Decease of the said William Penn, did enter into,

or from the time of the death of the said William Penn, down to the time of her own death, was in the quiet and peaceable Possession of, the said three Lower Counties, or of all the Lands, Tenements, and Hereditaments therein, or any part thereof, in her own Right, or as a Trustee, or in Right of, the Plaintiffs, or either of them, as by the Bill is suggested, or in any other manner whatsoever than as Intruders upon the Right and Property of this Defendant and his said Ancestors, and subject thereto, and to the Right claimed thereto by the Crown as aforesaid.

Neither doth know or believe, or ever heard, save from the Plaintiffs, that the said William Penn, in his Life-time, or the said Hannah Penn, after his death during her Life, or the Plaintiffs since her death, down to the time of the Plaintiffs said Bill, or since, respectively, and frequently from time to time as Occasion required, appointed Deputy or Lieutenant-Governors of the said three Lower Counties, in the manner pretended and suggested by the Bill, or in any other manner whatsoever then as before mentioned and set forth by this Defendant.

Or that they, or either of them, begun, continued, or carried on the great Improvements now in being thereon at their own sole and prodigious Expence, as pretended by the Bill, or that they, or either of them, were of any Expence on that Account, other than what they were obliged necessarily to be at for the Benefit and Safety of their said Province of Pensilvania.

Believes that the Plaintiffs, and their said late Father and Mother, were so well apprized and conscious of the Right of this Defendant, and his said Ancestors, to the said three Lower Counties, and of the Weakness and Injustice of their Pretensions thereto, that they would never have put themselves to any Expences for the improving or cultivating the said three Lower Counties upon so precarious and illegal a Pretence as they set up to the same, and which they must, as the Defendant believes, be sensible they could never support when properly and legally contested.

Denies that he ever made such Application to the said Hannah Penn, for setting out and describing of the Bounds of the said other Province of Maryland and Pensilvania, during the Infancy of the Plaintiffs, as is alledged and suggested in and by the Bill, or at any other time or times whatsoever, or that he this Defendant then, or at any other time or times whatsoever, or upon any Occasion whatever admitted to the said Hannah Penn, or to any other Person whatsoever, that he had no Right or Title to the said three Lower Counties, or to any part of them, as is untruly alledged by the Bill; on the contrary, saith, he

this Defendant, and all and every of his Ancestors the Lords Baltimore, to the best of his Knowledge and Belief, always, from time to time, and upon every Occasion, claimed, maintained and supported their Right and Title to the said three Lower Counties, and every part of them, in the best manner they were able, and never, in any manner whatsoever, admitted they had no Title thereto, and have been at very great Expence from time to time in supporting their Right thereto, by Building of Fortifications in the said three Lower Counties, to defend the Inhabitants thereof from the Indians, and in improving and cultivating the same.

Denies that he, to the best of his Knowledge, Remembrance and Belief, ever made any such Representation or Proposals to the said Hannah Penn, or to any such or the like Effect, as is untruly suggested in and by the Bill, or that any such Agreement was, thereupon, made, entered into or executed by and between the said Hannah Penn and this Defendant as by the said Bill is suggested; but believes it to be true that the said Hannah Penn, by her Self and Agents, and others on her behalf, did apply to this Defendant, about the Year 1723, and made some such or the like Representation and Proposals to this Defendant, as the Plaintiffs by their said Bill suggest this Defendant made to her, and desired and requested this Defendant to enter into an Agreement in Writing, in Order to settle the Boundaries of the said two Provinces of Maryland and Pensilvania, and for the Prevention of all Contention and Differences between the Inhabitants of the said Provinces in the mean time.

And this Defendant, thereupon, and at the earnest Request and Desire of the said Hannah and others on her behalf, consented to enter into some Treaty of Agreement for that purpose.

And he this Defendant did, accordingly, afterwards, to that end, and about the time in the Bill mentioned, to the best of his Remembrance and Belief as to the time, enter into and execute an Agreement with the said Hannah Penn, to the Purport and Effect in the Bill particularly set forth, but for his greater certainty thereof craves Leave to refer thereto, when produced.

And believes that one part of such last mentioned Agreement was executed by the said Hannah Penn and the other Persons in the Plaintiffs Bill for that purpose named, and delivered to this Defendant, but, not having the same in his Custody or Power, cannot set forth the same as is prayed by the Plaintiffs Bill, but as to the Contents thereof refers to that Part thereof in the Plaintiffs Custody, when produced.

Hath heard and believes that such Proclamations were, afterwards, duly published in the said Provinces of Maryland and Pensilvania, by the Deputy-Governors thereof, in Pursuance

and Performance of the said Agreement, and about the times, in the Bill particularly set forth, and that such Proclamation published by the Deputy-Governor of Maryland was mentioned to be published by the Directions of this Defendant.

Hath heard, and believes it to be true, that Matters remained at quiet, under the said last mentioned Agreement, not only during the 18 Months therein mentioned, but for a much longer time, in Vertue and Consequences, and under the true Intent Meaning and Equity of the said Agreement, as by the Bill is alledged.

But denies that he either knows, or believes, that the Plaintiffs late Mother, or the Plaintiffs, on their Parts, justly and truly observed the said Agreement, by not granting out or pretending to grant out any Lands near to the Borders of Pensilvania or Maryland, or in the manner by the Plaintiffs Bill pretended; on the contrary, saith he hath heard and believes that the Plaintiffs late Mother during her Lifetime, and the Plaintiffs after her Decease, and pending the Continuance of the said last mentioned Agreement, frequently granted out Lands, near the Borders of the said Provinces, and Lands within the said three Lower Counties, without any legal Right or Authority for their so doing, and with a View and Design of defeating and depriving this Defendant of his Right and Title to the said three Counties, and of Extending their Grants and Settlements far beyond the true Limits and Bounds of their said Grant or Charter of Pensilvania, and in direct Breach and Opposition of the said Agreement, to the great Wrong and Injury of this Defendant.

Denies that the exact Marks and Bounds of the said Provinces of Maryland and Pensilvania, not being markt out pursuant to the Design and Intention of the said last mentioned Agreement, was any ways occasioned by any Neglect in this Defendant, this Defendant being then ready to have it done, on his part and amiceably to have adjusted all Matters then inDifference or Dispute between this Defendant and the Plaintiffs or their said Mother; and the not doing the same was wholly occasioned by the then neglect of the Plaintiffs and their said late Mother.

Saith that he, on his Part, observed and performed the said Agreement, in every respect, as far as he was able, and was then on his Part, ready to have carried the same into Execution, if the Plaintiffs, or their said late Mother in her Life-time, would have concurred with him therein.

Denies that he either knows, or believes, that the Plaintiffs said Mother, or the Plaintiffs, or either of them, did justly and honestly fulfil and perform the said Agreement, on their Parts, according to the true intent and meaning of the same,

as by the Bill is suggested, but saith that he did, on his Part, fully and truly, and in all points and in every respect perform and fulfil the same.

Denies that he did, by himself, or any of his Governors, Commission Officers, and other Servants, to the best of his Knowledge and Belief, from the time of his first entering into the said Agreement, or at any time pending the Continuance thereof, make many, or any large or extensive Warrants, or Grants of great Quantities of Lands, to sundry Persons, without specifying where or in what Places the same were to lie, with intent that such Grantees should seat down upon, or take up, any Lands belonging to the Plaintiffs, or either of them, or their said late Mother, or any of their Ancestors, as is untruly alledged in the Bill, or with any View, or Design of extending his Settlements beyond the true Limits and Bounds of the Grant made to the said Cecilius, this Defendant's Ancestor.

Saith he did on or about the first Day of July 1731, as in the Bill is for that purpose mentioned, present, or cause to be presented, to his present Majesty, such Petition, praying his Majesty to order the Proprietors of Pensilvania, to join with him in settling and ascertaining the Boundaries of the said two Provinces of Maryland and Pensilvania, as in the Bill is for that purpose mentioned and set forth, and which, he humbly apprehends and conceives, is a clear and manifest Evidence of this Defendant's real Intention and Desire of performing the Agreement herein before mentioned, and shews the not performing of that Agreement, or the not carrying it into Execution, was not owing to any Neglect or Design in this Defendant, as is pretended by the Bill, but to the Neglect or Design of the Plaintiffs.

Denies that he either knows, or believes, that he prayed or desired by such his last mentioned Petition to his Majesty, presented on the first of July 1731 as aforesaid, that the Bounds of the said Provinces might be ascertained or settled upon the foot of the said Order in Council of 1685, or said other Order in Council of 1708, as suggested by the Bill; neither did this Defendant by such Petition, to the best of his Knowledge or Belief, exclude, or intend to exclude, the said three Lower Counties of Newcastle, Kent, and Sussex, or either of them, or any part of them, from being adjudged and determined to be part of his said Province of Maryland, or thereby mean, or intend, to leave to the Plaintiffs the said three Lower Counties, or either of them, or any part of them, as by the Plaintiffs said Bill is insinuated.

Denies that he ever applied to the Plaintiffs, or either of **them**, or any other Person, or Persons on their Behalf, before the

presenting such his Petition to his Majesty in July 1731 as aforesaid, not to give up to him the said three Lower Counties, but only to settle the Limits and Bounds of the said Provinces of Pensylvania and Maryland exclusive of the said three Lower Counties, or either of them, or any part of them, or that he presented, or caused such his last mentioned Petition to be presented, to his Majesty, as aforesaid, in Order to spur the Plaintiffs on, or to bring them to a Compliance with any such Proposal or Desire, as is untruly suggested in and by the Bill.

But, on the contrary, this Defendant always look'd upon the said three Lower Counties of Newcastle, Kent and Sussex, and every of them, and every part of them, to be part of, and of Right appertaining to, his said Province of Maryland, and always insisted upon his Right thereto as such, and never acknowledged or believed the Plaintiffs, or either of them, had any Right or Title thereto, whatsoever.

Hath heard and believes his Majesty, by his Order in Council, of such Date as in the Bill, was pleased to refer this Defendants said last mentioned Petition to the Consideration of the Lords of the Committee of his Privy Council, for hearing Appeals and Complaints from the Plantations, and that their Lordships of the said Committee, by their Order, likewise of such Date as in the Bill, were pleased again to refer the said last mentioned Petition to the Consideration of the Lords Commissioners for Trade and Plantations, as by the Bill is set forth, but, for his greater Certainty therein, begs leave to refer to such Petition, Orders, or the Minutes thereof, in the proper Register Books, when produced.

Saith that, soon after this Defendant's Application to his Majesty by Petition as aforesaid, for settling the Boundaries of the said Provinces, and the Plaintiffs perceiving that this Defendant was intent and resolved to proceed in such Application in Order to obtain his Majesty's Determination thereon, the Plaintiffs, with a View to put a stop to the same, made frequent Applications to this Defendant, and, at last, by their earnest Solicitations and frequent repeated Requests, prevailed upon this Defendant to enter into a Treaty with them for settling and determining the Bounds of the said Provinces amicably between themselves, and to drop the Application he had made to his Majesty by Petition in the manner before mentioned, which he admits he was prevailed upon by them to do, and, therefore did not solicit or obtain any final Order from his Majesty upon such last mentioned Petition.

Denies that such last mentioned Treaty, between the Plaintiffs and this Defendant, for the purpose aforesaid, was first proposed by this Defendant, or entered into by the Plaintiffs,

or either of them, upon this Defendant's motion, Application, or Request, or of any Agent or Person concerned for this Defendant, or on this Defendant's Behalf, to the Knowledge or belief of this Defendant, as by the Bill is untruly suggested; but, on the contrary, saith said last mentioned Treaty was first proposed by the Plaintiffs, and was agreed to, and entered into, by this Defendant, at the proper Instance, Desire and Request of the Plaintiffs, and upon their own Motion and Solicitation entirely.

Saith that one of the Plaintiffs frequently waited upon this Defendant, at his house in Grosvenor Square, after such this Defendant's Application to his Majesty by Petition as aforesaid, in order to prevail on this Defendant to come into such Agreement.

Denies that he either knows, remembers or believes, that he this Defendant, in order thereto, or to bring about the last mentioned Treaty, did apply by himself in Person to the Plaintiffs Solicitor, or to the Plaintiffs, or either of them, or any other Agent of theirs, or Persons concerned for them, and press and desire to have a Meeting between the Plaintiffs and this Defendant in order to settle and agree the Matters in Difference between them, in the manner as by the Bill is untruly suggested; but, on the contrary, the Plaintiffs pressed and desired this Defendant to have a Meeting for that purpose, and to treat with them about the same.

Denies that he did, then, or at any other time, declare that if the Plaintiffs would not agree thereto he would set up his former Pretence to the said three Lower Counties, as pretended by the Plaintiffs said Bill, in order to induce or bring the Plaintiffs to a Compliance with any such pretended Proposal or Accommodation, as is most untruly suggested in and by the Bill.

Neither did this Defendant, by his entering into the said last mentioned Treaty, intend, or design, to make, or so much as conceive, or imagine that he should or could make, to himself, any great or undue Advantage thereby against the Plaintiffs by means of their pretended Ignorance of the Premises, as is most untruly insinuated in and by the Bill.

Neither did this Defendant, then, know or believe, nor doth he now know or believe, that the Plaintiffs, at the time of the said Treaties being set on foot, were wholly or utterly unacquainted with, or Strangers to, the said old Disputes in 1683, 1684, 1685, and 1709, as by the Bill is alledged, or that the Plaintiffs, or either of them, were at all, or in any manner whatsoever, Strangers to, or unacquainted therewith; but, on the contrary, this Defendant verily believes the Plaintiffs were then thoroughly, and in every respect, as well acquainted with all and

every the said former Proceedings and Disputes touching the Matters aforesaid, in the said several Years of 1683, 1684, 1685, and 1709, as they now are.

Neither did this Defendant treat with them, or enter into the said last mentioned Treaty, with any View or Design, or even so much as an Imagination, that he could or should impose upon the Plaintiffs, or either of them, or take, or have any Advantage of them, upon any of the Accounts in the Bill contained, or any other Account whatsoever.

Nor doth he now know or believe that the Plaintiffs, or either of them, were under any of the pretended Disadvantages in the Bill mentioned at the time of such last mention'd Treaty, as is suggested in and by the Bill.

On the contrary, this Defendant saith he most assuredly believes the Plaintiffs were not only as well, but much better apprized, than this Defendant, of all and every the several Orders and Proceedings, and others Transactions, that had been before had and made touching the Boundaries of the said Provinces, and the several and respective Claims that had from time to time been made thereto, and that he this Defendant was under much greater Disadvantages, and much more liable to be imposed on, in such last mentioned Treaty, than the Plaintiffs.

And verily believes that the Plaintiffs, and their Agents, had in View the gaining great Advantages from this Defendant by such Treaty, or, otherwise, they would not have so earnestly applied to this Defendant, and taken such Pains, and used such Endeavours, as they really did, to prevail on this Defendant to come into such Treaty.

Saith that, pending such Treaty, and before they came to any Conclusion or Agreement thereon, this Defendant gave the Plaintiffs John and Thomas, and Mr. Paris their Sollicitor, and other their Agents, several Meetings, and at different Places, to receive their Proposals, and treat with them concerning the same; but, whether such Meetings were had at the particular and respective times in the Bill for that purpose mentioned, this Defendant doth not know, or remember, or can set forth, having made no Memorandum, or kept any Account thereof, and therefore, this Defendant cannot set forth, either as to his Knowledge, Remembrance, or Belief, the particular or respective Days on which such several Meetings or Treaties were had, though this Defendant believes that several Meetings were had between the 11th of June 1731 and 10th of May 1732.

Believes he might, at some or one of the said Meetings, upon the said last mentioned Treaty, produce, out of his Pocket, a Map or Plan of Pensilvania, which had been, many Years before, transmitted by one of his Agents in Maryland, and had been,

by such Agent, as this Defendant verily believes, received from Pensilvania, and, with a Rule and Pencil, draw Lines thereon, but, in what particular Parts, this Defendant doth not remember, to denote in what manner he thought the bound Lines ought to run.

But saith that he did not intend, at the time, or by the manner, of drawing the said Lines, to exclude from him this Defendant, and to include to and for the Plaintiffs, any thing but what he then apprehended the Plaintiffs had good Right to either in Law or Equity; whereas, this Defendant is since fully convinced, the Plaintiffs had no such Right to the said three Lower Counties.

Saith he was guided by the said Map or Plan in such Treaty, this Defendant, of his own Knowledge, being then an entire Stranger to the said Peninsula, and every Part and Place therein, and knowing very little thereof but from Information, and the several Representations that were made to him thereof by the Plaintiffs and their Agents, and from the said Map and Plan, which this Defendant saith he hath since found, and been convinced, was greatly faulty, incorrect and untrue.

Which said Map or Plan this Defendant saith was neither made by his Order, or Directions, but was made, as he verily believes, by the Plaintiffs, or their Ancestors, or their Agents, and sent by them to this Defendant's Agents in Maryland, and was made use of by this Defendant as the first that came to hand, this Defendant not then imagining that there was, or could have been, so great a falsity therein as he hath since discovered there really was.

And the reason that this Defendant believes, that the said Map or Plan was made or framed by the Plaintiffs, or their Agents, is, for that, when this Defendant was treating with the Plaintiff Penn about the Bounds of the said Province, and the manner in which the Limits should be run, and when this Defendant produced the said Map or Plan out of his Pocket, and drew Lines thereon, as herein before is mentioned, the Plaintiff Penn himself, at the same time, produced a little Map or Plan, drawn with a Black-Lead Pencil, which was, as this Defendant observed and verily believes, in all things, alike to that which this Defendant so produced, and which the said Penn told this Defendant had been sent over, to him, from Pensilvania, by Logan his Deputy-Governor, in order to treat with this Defendant about the Bounds of the said Provinces, and which said Plan or Map the said Plaintiff Penn made the same use of, by drawing Lines and otherwise, as this Defendant did of that he this Defendant produced.

Saith that, for the reason before mentioned, he cannot set

forth or say on what particular Day such Meeting was had, when he so produced and mark'd the said Plan or Map as before mentioned, nor whether the same was or was not on the 20th Day of July 1731. as by the Plaintiffs said Bill is alledged: neither doth apprehend it any ways material on what particular Day such Plan or Map was so produced or mark'd by this Defendant as aforesaid, in regard this Defendant admits it was done at some or one of the said Meetings, pending the said last mentioned Treaty, and before they came to any Conclusion or Agreement thereon.

Believes he might at the said, or some other of the said, Meetings, but at what particular time or times he doth not remember, nor can set forth, otherwise than that it was before the said 10th of May 1732. insist that his Northern Bounds for Maryland should extend Northwards as far as to within 15 Miles South of the City of Philadelphia in Pensilvania, which this Defendant saith he humbly apprehends was, instead of being further, not near so far as what the just Bounds of Maryland ought to extend, agreeable to the Limits and Bounds described by the said Original Charter of Maryland.

And denies that he then believed, or knew, or that he now believes or knows, or that the same in Fact is true, to the Knowledge or Belief of this Defendant, that the so extending the Northern Bounds of Maryland, to within 15 Miles South of Philadelphia, in the manner aforesaid, was much, or at all higher, or further, than the Northern Bounds of Maryland ought to extend.

And saith that, for ought he knows to the contrary, the Plaintiffs, or their Agents on their behalf, upon this Defendant's insisting that his Northern Bounds of Maryland ought to extend in the manner before mentioned, might desire that the same might not be agreed upon to extend so far Northwards, but only to within 20 or at most to within 18 Miles, of the said City of Philadelphia, as by the Bill is suggested: but this Defendant doth not particularly remember the same and if the Plaintiffs, or their said Agents, did make any such Objection to the Extent of the said Northern Bounds of Maryland, as the Plaintiffs set out by their Bill, this Defendant believes he did refuse to Consent thereto, he then, and still, looking upon, and esteeming, the said Northern Bounds of his said Province of Maryland, as he then insisted upon them to extend, to be fully comprized and included within the Limits and Bounds described by the said Original Charter of Maryland, and that all the Lands comprized within such Bounds and Limits are properly Part of, and of Right appertain to, his this Defendant's said Province of Maryland and are not Part of, or belong or apper-

tain to, the said Province of Pensilvania, as by the Bill is suggested; nor were the Northern Bounds of the said Province of Maryland, as this Defendant is advised and humbly insists, confined by his Charter, as the Plaintiffs pretend, to the 39th Degree compleat, or to the beginning of the 40th Degree, but on the contrary, by the Original Charter do and ought to extend to the 40th Degree compleat.

And is advised and conceives that the Plaintiffs agreeing to the Boundaries to be settled, as mentioned in the said Agreement, cannot be look'd upon as giving them any such Merit as they would willingly ascribe to themselves by their Bill, or any Merit at all, but, on the contrary, it now plainly appears, as this Defendant apprehends and believes, that the said Plaintiffs had, by the said Agreement, endeavoured to impose upon, and deceive, this Defendant in the settling the said Boundaries in manner after mentioned, and by pretending to give unto him that which was not theirs to give, and which they had no Right or Title to, being comprized within the Charter of Maryland, and no ways comprized within the Charter of Pensilvania, but which did not then appear to this Defendant, who was, then, not thoroughly acquainted with the Situation of the said Country, otherwise than as aforesaid.

Saith, that whatever Objections may have been made by the Plaintiffs to the Proposals, were pretended, and colourable only, and made the better to conceal and gloss over their Designs upon this Defendant, and founded on an untrue Suggestion that the 40th Degree was compleat and ended where this Defendant hath since found and discovered it is not; and were, as this Defendant verily believes, only barely mentioned, and that not with any Design or View of having any Weight or being agreed to by this Defendant, the same, as stated upon the face of the Plaintiffs own Bill, being most unreasonable and unjust, and what they could never expect this Defendant would agree to: in regard this Defendant most assuredly believes they themselves must know, that the utmost of the said Northern Limits of the said Province of Maryland, as set out by their Bill to have been agreed to by them, are clearly and expressly comprized and included within the said original Charter of Maryland, and were no Part of the Province of Pensilvania, and were what the Plaintiffs had not the least Shadow or Colour of any legal Title to.

Denies that he either knows, or believes that all, or any Parts, of the said Northern Limits of the said Province of Pensilvania, as set out by the Plaintiffs said Bill to have been agreed between them and this Defendant in the manner therein mentioned, were any Part of Pensilvania, or any ways included within the Char-

ter of Pensilvania, or could legally pass to the Plaintiffs by their Charter, or otherwise; but, on the contrary, were this Defendant's Right and Property long before such Treaty or Agreement with the said Plaintiffs, under, and by virtue, of, the said original Charter of Maryland to the said Cecilius in 1632, as before is set forth.*

Saith, he believes the Plaintiffs John and Thomas Penn did, at the said last-mentioned Meeting and Treaty, as before set forth, produce a Map or Plan, or pretended Map or Plan, of the Parts in question: and for ought he knows, or remembers to the contrary, they, or one of them, or some one of their Agents there, might draw Lines on their said Map or Plan they then produced, to denote in what manner the then proposed Bound Lines should run, as by the Bill is set forth.

Believes, that the manner in which it was then proposed the said Bound-Lines should run, being, as he has since discovered, so greatly for the Advantage and Benefit of the Plaintiffs, and so much to the Disadvantage and Injury of the Defendant, (and which the Defendant believes the Plaintiffs were then very sensible of, they being very well acquainted with the Situation of the several Parts of the said Peninsula) and the Defendant being not thoroughly ——— therewith, and relying solely upon the Truth and Exactness of the said Map or Plan, by which he was greatly misled and deceived, as herein after is mentioned, the Plaintiffs were glad to close with the said Proposals, and to comply with the manner in which it was proposed the said Bound-Lines should run: the Plaintiffs, as the Defendant verily believes, then well-knowing that the same would exclude great part of the said three Lower Counties, which were included with the Defendants Bounds of Maryland, from being part of Maryland, without including any Part, or any Tract of Land whatever, that the Plaintiffs had any Right or Pretensions to: so that the Agreement, upon that footing, was, in effect, a giving up, from the Defendant to the Plaintiffs, of great Parts of the said three Lower Counties, which the Defendant insists were his Property, without any the least Consideration moving from the Plaintiffs to the Defendant, as a Satisfaction or Equivalent for the same.

Denies that the said Treaty was carried on, by the Defendant, on his Part, in the over-bearing manner as is untruey suggested in the Bill, or that this Defendant refused to recede from any thing he at first insisted on; but, on the contrary, the Defendant, pending the said Treaty, was prevailed upon to make

* The Defendant's Agents had lost themselves, and he swears to the Answer they drew, and so here insists upon his Right by his Charter to the 43d Degree: for that's the Northern Limit of Pensilvania.

great Concessions to the Plaintiffs, and which the Defendant never would have done, if he had had a thorough Knowledge and Insight into the true Situation of the several Parts of the said Peninsula; and if the said Map or Plan, from which the said Agreement was founded, had been a true and exact Map or Plan thereof.

Saith, that the Plaintiffs, and for the Reasons before-mentioned, as the Defendant verily believes, did agree that the said Map or Plan, so produced by the Defendant, should be engraved by Mr. Senex, in order to be affixed or annexed to, and to explain, the Meaning of the Agreement they should come to, as by the Bill is suggested; and that the said Mr. Senex, might be proposed or named by this Defendant, or some other on his behalf, and agreed upon as a more proper Person to engrave the said Map or Plan than the Person at first proposed and named by the Plaintiffs, if any other was named by them, which the Defendant doth not remember that there was.

Believes, that the said Map or Plan was printed, or stamped, on the original Agreement afterwards executed on the 10th of May 1732.

Believes there is No material Difference, between the Map or Plan so produced by the Defendant, and that printed or stamped on the said original Articles of Agreement of 1732.

Believes he did, at some one of the Meetings pending the said Treaty, but whether particularly on the 2d of July 1731, as in the Bill, cannot remember or set forth, produce a Paper, containing Notes of some few things he proposed should be inserted as Part of the said intended Agreement, and that such Notes were of the Defendant's own Hand-writing; but absolutely denies that the same were, or purported to be, compleat Notes of every thing, or to contain the Substance of all the several Matters proposed as Part of the said intended Agreement; or that he proposed, desired or insisted, or that the Plaintiffs agreed, that such Agreement should be drawn upon the foot of those Notes only, as is insinuated in the Bill; but the same were only some few Notes concerning the Matters in dispute, which this Defendant had committed to Writing as they occurred to his Mind, lest they might afterwards escape his Memory.

Believes he read the same to the Plaintiffs, as his own Notes, and Part of his own Proposals; but not as entire or compleat Notes, or to contain all this Defendant's Proposals.

Saith, that he cannot now, at this distance of time, upon his Memory, or otherwise, not having kept the said Notes by him, nor having any Copy thereof, set forth the particular Contents thereof, tho' whatever the Contents were, believes the same

may be contained in the Agreement that was afterwards executed between the Defendant and the said Plaintiffs.

Saith, that he cannot set forth a full, true, and exact Copy thereof, at full Length, in the very Words, Figures, Letters, and Abbreviations thereof, as the Plaintiffs have required him to do by their Bill, the same being now lost, mislaid, or destroyed, as the Defendant believes; such Notes, after executing the said Agreement, being disregarded and looked upon no otherwise than as waste Paper.

Doth not know, or believe, that running a Circle at the distance of two Miles from Newcastle is, in any sort, contrary or repugnant to the Words of the pretended Agreement, which describes the Circle to be a Circle of 12 Miles, whose Semi-diameter must be 2 Miles, and of consequence its whole Diameter 4 Miles, which will make a Circle, or what would be commonly called the Periphery of the Circle, 12 Miles or thereabouts, as the Plaintiffs alledge by their Bill.

Believes, the Plaintiffs, or one of them, or some other Person on their behalf, did desire the Defendant to deliver to them his said last mentioned Note, or Proposal, in order to insert the same in the said intended Agreement; but denies, that he at first agreed thereto, and afterwards said he had no Copy thereof, and therefore delivered it to his said Solicitor, in the manner as by the Plaintiffs Bill is suggested, tho' the Defendant believes, that, upon the Plaintiffs desiring to have his said Notes, he might and did say, that he had no copy thereof, but would deliver the same to his Solicitor, in order to give the Plaintiffs a Copy thereof: And that he the Defendant did then, accordingly, deliver the same over to his said Solicitor, for the purpose before-mentioned; and that He might make and give the Plaintiffs a Copy thereof, in order that the same might be inserted, and made part of the said intended Agreement; and that he the Defendant, did consent and direct his said Solicitor, to give to the Plaintiffs a Copy thereof.

Hath heard, and been informed by his said Solicitor, and therefore believes it to be true, that he did, in some few Days afterwards, give the Plaintiffs, or their Agent, a Copy of the Defendant's said Notes, as in the Bill: but denies, that he either knows, believes, or hath ever heard or been informed, by his said Solicitor, or otherwise, that the Copy, so delivered by the Defendant's said Solicitor, to the said Plaintiffs or their Agents, was very much, or at all, abbreviated from the original Notes so produced by this Defendant at the said Meeting, as aforesaid; but, on the contrary, the Defendant hath been informed, by his said Solicitor, and therefore believes, that the same was a true Copy thereof, and no ways altered or ab-

breviated from what it was when the Defendant so produced the same, as aforesaid.

Saith, that he cannot answer, or set forth, whether the material Parts of the said Copy of such Notes, so delivered by the Defendant's said Sollicitor to the Plaintiffs or their said Agent as aforesaid, are, or are not, in the Words, or to the Effect, in the Bill, he having never seen such Copies, or known any thing thereof, save from the Information of his said Sollicitor, and therefore begs leave to refer, for certainty, to the said Copy, when produced by the Plaintiffs.

Neither can the Defendant answer, or set forth, for the Reasons before-mentioned, at this distance of time, whether the material Parts of such Notes, so produced by the Defendant as aforesaid, were, or were not, in the Words, or to the Effect, in the Plaintiffs said Bill suggested, the Defendant not having the same in his Custody or Power, as before is mentioned.

Nor can the Defendant, now, set forth where the said original Note, or Proposal, now is, and therefore the Defendant cannot undertake to produce the same at the Hearing of this Cause, as the Plaintiffs pray by their Bill, which, otherwise, he would readily have done.

But saith, that, if he should hereafter find the said Notes, he will be ready to produce the same at the Hearing of this Cause.

Saith, he hath been informed by his said Sollicitor, and believes it to be true, that the Plaintiffs Sollicitor did, some time after such Treaty as aforesaid, and for ought the Defendant knows to the contrary, it might be on the 16th of August 1731, as in the Bill is set forth, deliver over to Mr. Sharpe, the Defendant's Sollicitor, a Draught of the intended Articles of Agreement, between the Defendant and the Plaintiffs, which had been prepared by the Plaintiffs Agents and Sollicitor, in order to be considered and settled by the Defendant.

Hath heard, and believes it to be true, that the said intended Articles of Agreement might lay before the Defendant, and his Agents, for his and their Perusal, from the time they were so delivered out by the Plaintiffs said Sollicitor, to about the beginning of May following; but the more exact time they so lay before this Defendant, as aforesaid, the Defendant cannot set forth.

Admits, that he was assisted, in the settling the said intended Articles of Agreement, by Mr. Wynne his Council, and Mr. Sharpe his Sollicitor, as in the Bill is alledged; but denies, that he was assisted therein by Mr. Senex or that Mr. Senex perused the same, otherwise than in regard to the Pro-

priety of some of the Terms and Expressions made use of in the said Agreement; nor was this Defendant so much as once with the said Mr. Senex thereon, nor his Solicitor, but once, as the Defendant is informed and believes, tho' the Defendant is informed he was often applied to by the Plaintiffs Agent as his Mathematician.

But believes the said Mr. Senex was no otherwise concerned, than being consulted in relation to the Propriety of some of the Terms used in the said Agreement, and in engraving the Plate annexed to the said Articles; in doing of which the Defendant believes, he acted a very indifferent Part, and was looked upon to be, and was, as the Defendant verily believes, as much in the Service and Interest of the Plaintiffs, as of the Defendant.

Neither was the Defendant assisted, in the perusing and settling the said intended Articles of Agreement, by his Lieutenant-Deputy-Governor of Maryland, Mr. Ogle, as the Plaintiffs alledge by their Bill; nor was the Defendant helped or assisted therein by any other Persons than as before mentioned.

Saith, that, whilst the said Draught of the intended Articles of Agreement, lay before the Defendant for his Pernsal and Consideration, as aforesaid, several Alterations were made therein by the Plaintiffs and their Agents, as well as by the Defendant and his Agents; and particularly that the Clause mentioned by the Plaintiffs Bill to have been inserted in the said Articles, pending the time the said Draught lay before the Defendant for his Consideration, as aforesaid, whereby it was provided, that in case a sufficient Quorum of the Commissioners to be named on either side, should not, from time to time, according to the Appointments and Adjournments to be made for that purpose, attend to proceed in the marking and running out the Lines and Bounds aforesaid (for want thereof same could not be done within the time limited) then the said Agreement should be void; and, in such case, the Party or Parties whose Commissioners should make such Default should forfeit and pay unto the other Party or Parties, whose Commissioners should attend, upon Demand, the Sum of 5000*l.* of lawful Money of Great Britain, as in the Bill is set forth, was looked upon as much for the Benefit and Advantage of the Plaintiffs, as of the Defendant; nor can the Defendant certainly say, whether the same was first proposed by the Defendant or his Agents, or by the Plaintiffs, or some of their Agents, but, to the best of the Defendant's memory and Belief, it was proposed by the Plaintiffs, or Mr. Paris, on their behalf.

Nor doth this Defendant believe the Plaintiffs would have complied with any Alterations proposed by the Defendant, or any of his Agents, if the same had not been apparently for their

own Advantage; and whatever Alterations were made, they were such as the Plaintiffs, and their Agents themselves, thought as reasonable and necessary, upon their being mentioned and proposed, as the Defendant, or his Agents.

Believes it to be true, that the several Alterations in the Plaintiffs Bill set forth to have been made in the Draught of the said intended Articles of Agreement, after the same had been delivered over to the Defendant and his Agents, as aforesaid, were agreed upon between the Plaintiffs and this Defendant, and made part of the Agreement that was afterwards executed.

Defendant doth not recollect any other Alterations that were made therein, while the said Draught laid before the Defendant and his Agents, than as in the said Bill are set forth.

Saith all the Alterations that were proposed to be made by the Defendant, or on his Behalf, in the said intended Agreement, being so very reasonable, were readily complied with, and agreed to, by the Plaintiffs and which the Defendant is not at all surprized at, since he hath discovered the great Advantage they had a design and view of gaining over the Defendant by the said Agreement, and the great Disadvantage that was likely to accrue therefrom to the Defendant, thro' the Error and Misrepresentation that was inserted in the said Map or Plan, upon the foot of which the said Agreement was founded; and which the Plaintiffs, as the Defendant believes, knowingly and designedly, took advantage of, from the Defendant's Ignorance and Want of Knowledge of the several Places mentioned, in the said Map or Plan, and of the due and proper Situation and Distances thereof, without discovering the same to the Defendant.

For the Defendants saith, that, in the said Map or Plan, which was so made use of as a Guide to the Parties in making the said Agreement, there is a Place described and said to be Cape Hinlopen, in which Place there is no such Cape; and that the Place described or said by the said Map to be Cape Cornelius, is the true Cape Hinlopen, originally so called by the Dutch, and so described in their Maps: the Signification of which Word Hinlopen, in the Dutch Language, is, going in, from the Dutch Word Hinlopen and the same, in the Plaintiffs pretended Deeds of Feoffment, is called Cape Hinlopen, alias, the Whore-Kilns, which formerly were there, or thereabouts, and are so described in the said pretended Agreement; which was a great Imposition upon the Defendant and his Agents, and greatly misled them therein, in regard the due East and West Line that was agreed upon to be drawn a-cross the Peninsula, was to begin, on the East Part of the Place, in the said Plan, or Map, called Cape

Hinlopen, but ought to have been from that Place only which in the said Map is called Cape Cornelius.

Believes, that the said Draught of the said Articles of Agreement, was afterwards, about the Month of May 1732, as in the Bill, delivered over by the Defendant's Solicitor, to the Plaintiffs, in order to be prepared and made ready for Execution, and to be engrossed in the manner the Defendant and the Plaintiffs, and their several Agents, had agreed upon, as before set forth : and that six Parts thereof, were accordingly, soon afterwards engrossed, and duly executed by the Defendant and the Plaintiffs Thomas and Richard Penn, on the 10th of May 1732, in the manner as set forth in the Bill.

And believes, that the said Articles of Agreement, so executed as aforesaid, bore Date, and contained such Recitals and particular Covenants, and were of such Purport and Effect, as in the Bill are particularly mentioned and set forth; but, for his greater Certainty, as to the Substance and Contents of the said original Articles, begs leave to refer thereto, when produced.

Hath heard, and believes it to be true, that, during the time the said Draught of the said Agreement was so under Consideration, as aforesaid, and before the same was executed, the said Map or Plan was carried to the said Senex to be engraved, and was engraved by him, and that the Plaintiffs and the Defendant jointly paid the said Mr. Senex for the same, as in the Bill is mentioned; and that the said Mr. Senex was desired, and did give his Opinion, in Writing, upon the Propriety and Fitness of the Terms and Expressions made use of in the said Draught of the said Agreement; but denies, that the same was so done by the said Mr. Senex at the Desire and Request of the Defendant only, but as well as at the Desire and Request of the Plaintiffs and their Agents, as of the Defendant.

Saith, that the said Senex was then, and still is, an entire Stranger to the Defendant, in so much that the Defendant doth not believe he should know him if he was to see him; and he was named only upon that occasion as the most known and properest Person for that purpose, and not as any Acquaintance, Friend, or Servant of the Defendant's.

Believes, that, soon after the Execution of the said Agreement, and as the Defendant believes, on the 12th Day of May 1732, the Plaintiffs and the Defendant did, severally and respectively, execute such several Commissions, as in the Bill are for that purpose mentioned, authorizing Commissioners therein named, or any six, five, four, or three of them, to mark, run, and lay out the Bounds so agreed upon.

Doth not certainly know, nor can set forth, whether the said

several Commissions (that is to say) that executed by the Defendant, and that so executed by the Plaintiffs, were or were not exactly alike, and agreeable each to the other, in Form and Substance, tho' he hath been informed and believes, they were alike and agreeable, each to the other, only changing the Name and Additions of the Persons who granted the Powers and Authorities thereby given, and to whom the Powers and Authorities were granted, as in the said Bill are mentioned.

But, for his greater Certainty therein, and as to the Substance and Contents of the said several Commissions, craves leave to refer to the same when produced.

Hath hard, and believes it to be true, that, some short time after the Execution of the said Articles of Agreement, and respective Commissions, and, for ought he knows to the contrary, on the 20th Day of May 1733, as in the Bill, the Plaintiff Thomas Penn left this Kingdom and embarked for Pensilvania, where, he soon afterwards, as the Defendant hath likewise heard and believes, arrived, and has continued there, to this time.

Believes, and hath heard that the said Thomas Penn carried over with him thither the said Commission, executed on the Plaintiffs Part, and also one Part of the said original Articles of Agreement, executed as aforesaid.

And the Defendant, by the same Ship in which the said Thomas Penn went, sent over to his Deputy-Governor at Maryland the said Commission, executed on the Defendant's Part, and also, one Part of the said original Articles of Agreement, executed as aforesaid, and, some short time after, sailed himself to, and arrived at, his said Province of Maryland, as in the Bill is mentioned.

Denies, that he endeavoured, or contrived, to take to himself on his own Part all, or any, the Benefit which under the said Articles might possibly result to him, and, at the same time, to deprive the Plaintiffs of all or any manner of Benefit which under the said Articles could possibly result to them, as by the Bill is most untruly alledged.

Neither hath the Defendant, nor all, or any one, of his said four Commissioners, by his Direction, Advice, Consent, Privity, or Knowledge used all imaginable, or any, Arts and Methods, to frustrate and evade the said Articles of Agreement, or to prevent the making out the Lines and Bounds pursuant to the same and the true meaning thereof, for the Reasons, or in the manner, as is pretended by the Bill.

Denies that he either knows, or ever heard, save from the Plaintiffs or their Agents, nor doth believe, that all of his said Commissioners, or any of them, or their near Relations, as the Plaintiffs charge by their said Bill, were possessed of Grants from

the Defendant or his Officers under his Authority for large Tracts of Land in general, without any Specification of the Place or Places where such Tracts should be situated or taken up, which Grants had not been located or seated, or that they, any, or either of them, were in hopes to have laid out such their Grants upon some improved or good Lands within the said Province of Pensilvania and the said three Lower Counties, any, or either of them, but were prevented by the Tenor of the said Articles of Agreement, as in and by the said Bill is alledged.

Denies, that he was any ways prevailed upon or induced to fly from his said Agreement, by the Advice, Persuasion, Entreaty or Desire of the Defendant's said Commissioners, any, or either of them, or any other Persons pretended to be possessed of like Grants, as pretended by the Bill, from the Defendant, or his Officers, of great, or any, Quantities of Land in no certain or particular Place as by the Bill is suggested.

Denies, that his said Commissioners, any, or either of them, ever writ, spoke, declared or mentioned to the Defendant, or to any of the Defendant's Officers, Agents or Servants who acquainted the Defendant thereof, that, in Case the Defendant would not perform, but would break, that Agreement, they themselves would raise and pay the 5000l. Forfeit, or the greatest, or some, or any Part thereof, or to any such or the like Effect.

Denies, that he ever heard, save by the Bill, or that he believes, his said Commissioners, any, or either of them, ever declared or gave out that they could not, if the Bound Lines should be run as by the said Agreement was agreed, settle and locate their large Grants upon such valuable Lands as they hoped to have done by Eneroachment, in case no Bounds had been agreed upon, or to any such or the like Effect, as by the Bill is suggested.

Denies, that he, in order to oblige such his Grantees, as by the Bill is alledged, or for any other Purpose to the Prejudice of the Plaintiffs, writ, spoke to, advised or consulted with many, or any, Persons in Maryland, or else-where, how, or in what manner, or by what means, to avoid the running and marking out the Lines in the manner and within the time agreed on, and yet, at the same time, to avoid incurring and paying the said 5000l. Forfeiture in the said Articles provided, in any such Manner as set out and pretended in and by the Bill, nor was any such Means or Method found out, or agreed upon, for that Purpose as is suggested by the Bill, nor was any such pretended Method or Resolution adhered to by the Defendant and his said Commissioners, or any, or either of them, or any others, as is pretended by the Bill,

to prevent the said Agreement being carried into Execution, nor any such previous Measures concerted for that purpose in the manner as by the Bill is alledged.

Has heard, and believes it to be true, that it is, to this Time, and has long been, the usual, common and constant Method in the said Province of Maryland, as it has been in other Provinces as he is informed and believes, to issue out Warrants to Persons, of a certain Number of Acres of Land, uncultivated and not taken up, within the said Province of Maryland at Large, without specifying in what particular Spot, Parish, Precinct, Division or County, the same do or shall lie or be situated, and to leave such Grantees at liberty to find out, and set down upon, and appropriate to themselves, under such Maryland Grants at large, so many Acres as therein specified, in such Places within the said Province of Maryland, not before taken up and appropriated, as they like best, as in the Bill is alledged.

Likewise believes, that many of such Maryland Warrants may be, now, extant, for large Quantities of Land at large, within the said Province of Maryland, which have not been yet seated upon or appropriated.

Saith he believes most, if not all, of said Warrants that have been issued, and under which no Lands have been taken up or appropriated, are now of no manner of Force, nor can any Lands be now, as the Defendant believes, taken up or appropriated under such Warrant, for that, for these fifteen Years past or upwards, it hath been the usual Custom and Practice of the Defendant, and of his Deputies and Officers in his said Province of Maryland, to annihilate and make void all Warrants for Lands, where Lands are not taken up under the same within a limited Time, and Proclamations have, from Time to Time, been issued from the Land-Office in Maryland, declaring all such Warrants void under which the Lands were not taken up within the Time limited in such Proclamation for that purpose, and, after the Expiration of Time limited by such Proclamations, the said Warrants under which Lands were not taken up as aforesaid, were not allowed to take place.

And the Reason for the Defendant and his said Officers not suffering such Warrants to stand out and be unappropriated is, for that it hath been, and still is, the usual Method and Practice for the Persons entitled to such Warrants, upon their locating and taking up Lands under the same to have a Grant issue to them of such Lands, and thereupon to pay a Fine or Sum of Money to the Defendant as Lord Proprietor.

Saith that, for ought he knows to the contrary it may be true, tho' he never heard it any otherwise than from the Plaintiffs, and therefore hath no Reason to believe, nor doth he be-

lieve, that several of such unappropriated Maryland Warrants or Grants at large are now in the Hands of any of the Gentlemen who were the Defendant's Commissioners for executing the said Agreement of 1732, and several other considerable Men in the said Province of Maryland, as by the Bill is alledged, neither doth the Defendant know, nor can set forth, nor can form any Belief, what particular Grants, or of what particular Quantity of Land, or Number of Acres, within Maryland, if any such there are, are in the Hands or Possession of his said Commissioners respectively, or either of them, or of any Person in Maryland, in regard such Grants, when made, are assignable from one to another, and, therefore, it is impossible the Defendant should know, or can set forth, the particular Properties in such Grants; but denies that he either knows, or believes, or has been any ways informed, by any of such Maryland Grantees, or others, that such Maryland Grantees, or any, or either of them, did design or intend, by virtue of such pretended Maryland Grants, to set down upon and appropriate Lands which would, or which they apprehended would, by the Agreement in 1732 fall within the Plaintiffs pretended Bounds.

Neither doth this Defendant know or believe, or has ever been informed, that any Disappointment, or expected Disappointment, in appropriating such Lands, was any Motive or Inducement to any of his said Commissioners to the not completing and executing the said Agreement of 1732, as in the Bill is suggested; but the Reason of the said Agreement not being carried compleatly into Execution by the said Commissioners, so far as related to them, was, as the Defendant hath heard and verily believes, entirely owing to the Conduct of the Plaintiffs Commissioners, and to the Difference in Opinion, that had happened between them and the Defendant's Commissioners, with respect to the Method of running the Circle round Newcastle, and the Dimensions of such Circle, as herein afterwards is mentioned.

Hath heard, and believes it to be true, that the Meetings between the Plaintiffs Commissioners and the Defendant's said Commissioners, for running the Lines pursuant to the said Agreement, were begun at Newtown, in Maryland, on the 6th Day of October 1732, and were continued to the 24th of November 1733, at the several Times and Places in the Bill for that purpose set forth and mentioned, and, for ought the Defendant knows to the contrary, and as the Defendant believes, such Meetings were continued, adjourned, and held again, at the several Times and Places in the Bill for that purpose mentioned, but the Defendant, not being present at any of the said Meetings himself, cannot certainly set forth the several and

particular Times and Places of the Meetings of the said Commissioners of his own Knowledge, or in any other Manner than as he has herein before set forth the same.

Denies that he either knows, or believes, or hath ever been informed, that all and every the Matters and Things in the Bill set forth, and mentioned to have been transacted and passed by and between the said Commissioners on both Sides, at their several Meetings as aforesaid, or any of them, were so transacted and passed by and between the Defendant's said Commissioners, or any or either of them, in the Manner, or with the Views or Designs, as represented and alledged in and by the Bill, or with any other fraudulent Views or Intent or Designs whatever, nor can the Defendant, either to his Knowledge, Information or Belief, set forth the several Matters that passed between his said Commissioners and the Plaintiffs at their several Meetings aforesaid, in any other Manner than as he hath herein after set forth the same, the Defendant not being present at such Meetings, nor knowing anything thereof, otherwise than from what he hath heard and been informed from his said Commissioners.

Saith that the Account he hath received from his said Commissioners, of the several Matters and Transactions that were had between them and the Plaintiffs said Commissioners at their several Meetings aforesaid, is as follows, that is to say.

The Defendant hath been informed, by his said Commissioners, and which Information the Defendant believes to be true, that on the 6th and 7th Days of October 1732 a Quorum of the Commissioners on each Side appointed for running the Bounds pursuant to the said Agreement, met, and adjourned to Newcastle Town, in Delaware, on 30th of same October.

At which Time and Place the Defendant hath been, in like manner, informed, and believes, a Quorum of the Commissioners met, on each Side, and the Defendant's Commissioners insisting to have the Charter of Pensilvania, and the Deed of Feoffment for Newcastle produced, the second Article of the Agreement, directing the Commissioners to run out the Circle mentioned in the said Charter and Deed of Feoffment at 12 Miles Distance from Newcastle, the Plaintiffs Commissioners produced Copies or Exemplifications thereof, and a Dispute arising where they should fix the Centre of the Circle? the said Commissioners adjourned to the 1st of February then next.

And the Defendant hath been, in like manner, informed and believes, that on the 1st Day of February the said Commissioners met according to their last Adjournment, and adjourned to the next Day, and that on the next Day being the 2d of February, the said Commissioners met again on both Sides,

when a Dispute arising concerning the Dimensions of the Circle intended to be run about Newcastle, they adjourned to five in the Afternoon, at which time, at the Request and Desire of the Defendant's Commissioners, in order to prevent any further Doubts or Disputes, and that they might agree in Opinion touching the Dimensions of the said intended Circle, the Plaintiffs Commissioners were prevailed upon to agree to consult and hear Mathematicians on each Side.

And the Defendant hath, in like manner, been informed and believes, that the Commissioners accordingly met again in the Afternoon of the 2d of February, according to their said last-mentioned Adjournment, but the Plaintiffs Commissioners acquainting the Defendant's Commissioners that their principal Mathematician was so ill of the Gout that he could not attend, and desiring the Matter in dispute, and Question thereon, might be reduced into Writing, and that, if their said Mathematician could not attend the next Day, they would produce his Answer in Writing, the Defendant's Commissioners, to prevent any Delay or Loss of Time, offered to go themselves to the Plaintiffs said Mathematician, and to carry their Mathematicians with them, but which the Plaintiffs Commissioners, as the Defendant hath been informed and believes, would not comply with and refused, upon which the Defendant's said Commissioners reduced the Matter and Dispute in question into Writing, and the same was delivered to the Plaintiffs Commissioners and then, the Commissioners on each Side agreed to adjourn till next Morning at ten at the same Place.

According to which last Adjournment the Defendant hath likewise been informed and believes, the Defendant's Commissioners attended, being on the 3d of February following, and none of the Plaintiffs Commissioners attending, the Defendant's Commissioners, after having stayed a long time, ordered the Officer of the Court-house to go and acquaint the Plaintiffs Commissioners that they the Defendant's said Commissioners were there, and ready to go on Business, and to desire the Plaintiffs Commissioners to come immediately and join with them, it being long after the Hour appointed.

Some time after which, as the Defendant hath been informed and believes, two of the Plaintiffs Commissioners came, and, some time afterwards, a third of the Plaintiffs said Commissioners came, upon which the Defendant's Commissioners, after taking notice of their Delay and of the Time they had stayed, desired, as there was then a Quorum on each Side, they might then proceed to Business without further Delay, and, as a Reason and Inducement for the Plaintiffs Commissioners to comply therewith, the Defendant's said Commissioners ac-

quainted them, as the Truth really was as the Defendant hath heard and believes, that the Defendant's said Mathematicians were obliged to return to Maryland that Day, and the Defendant's Commissioners then produced and read the Answer of their Mathematicians, in Writing, to the Matter in Dispute and Question thereon as settled and reduced into Writing at their last Meeting, whereupon, and immediately after reading thereof, as the Defendant hath been informed and believes, one of the Plaintiffs Commissioners withdrew himself, by reason whereof there was not a sufficient Quorum of the Plaintiffs Commissioners left to proceed on Business; upon which the Defendant's Commissioners, after staying a considerable time in hopes either that the Commissioner of the Plaintiffs would return who had withdrawn himself, or that some other would have come, there being then, as the Defendant hath been informed and believes, five of the Plaintiffs Commissioners there then in that Town, but none of them coming, as the Defendant's said Commissioners were in Hopes and Expectation they would have done, the Defendant's Commissioners took notice thereof to the Plaintiffs Commissioners then present, and observed that it seemed very strange and surprizing to them that they did not meet to proceed according to the said Adjournment, and that, if they delayed in coming any longer, the Defendant's said Commissioners would think themselves obliged to quit the Place and protest against their Non-attendance; upon which the Plaintiffs Commissioners said Mr. Hamilton, one of their Commissioners was ill of the Gout, and not able to attend; whereupon the Defendant's Commissioners agreed to go to Mr. Hamilton, if the Plaintiffs Commissioners desired it, but which as the Defendant hath been informed and believes, the Plaintiffs Commissioners did not agree to do; and the Defendant's Commissioners having waited some time longer with their Mathematicians, and none of the Plaintiffs Commissioners coming, or sending any Message, the Defendant's Commissioners again repeated to the said two of the Plaintiffs Commissioners then present, the Necessity they the Defendant's said Commissioners should be under of leaving the Place, and protesting against the Plaintiffs Commissioners for Non-attendance, if a sufficient Number did not, in a short time, come.

And the Defendant's said Commissioners having stayed some time longer, to no manner of purpose, and it being then 35 Minutes after 12 o'Clock, and consequently the Appointment for that Morning at an end, and the Defendant's said Commissioners having heard that one of the Plaintiffs Commissioners had at the last Meeting declared the Affair to be transacted by them would not end there, but must be carried to England, from

whence, and from their wilfully neglecting to attend at the said Meeting, the Defendant's said Commissioners were fully satisfied and convinced, as they have since informed the Defendant, that the Plaintiffs Commissioners had no other Intent than to break off any further Proceedings towards executing the said Agreement, and, therefore, the Defendant's said Commissioners, before and in the Presence of one of the Plaintiffs said Commissioners (one of the two who were before present having, some time before, withdrawn himself) protested against the Non-attendance of the said Plaintiffs said Commissioners, reserving all Benefit and Advantage which did or might accrue to the Defendant by reason thereof, and then left the Place and returned to Maryland.

Admits that he the Defendant was then in Maryland, and that, on the Return of his said Commissioners to Maryland, and on the 15th of the same February, he the Defendant wrote a Letter, to the Governor of Pensilvania and one of the Plaintiffs Commissioners, setting forth the Attendance of the Defendant's own Commissioners, and the Non-attendance of the Plaintiffs, and that, were he the Defendant inclinable to make a strict Use of this voluntary Failure on the Side and Part of the Plaintiffs Commissioners, he the Defendant might disregard any further Notice or Execution of the said Agreement, and entitle himself, immediately, to the Forfeiture thereby mentioned by the Plaintiffs, but that, being fortunately in Person there, he the Defendant could recede in some measure from the Advantage he might claim from the Non-attendance of the Plaintiffs said Commissioners, which the Defendant's own Commissioners could not have done if the Defendant had not been there present himself, and signifying that the Defendant was willing, and did thereby offer, and had given Directions to his own Commissioners, to meet the Plaintiffs Commissioners on the first Monday in May then next, at Joppa in Maryland, but with this Salvo of all Right, Benefit and Advantage he the Defendant might claim from the Non-attendance or Failure of the Plaintiffs Commissioners on the 3d of February, as herein before is mentioned and set forth.

Saith he hath been informed by his said Commissioners, and believes it to be true, that after the Defendant had sent such Letter to the Governor of Pensilvania and one of the Plaintiffs Commissioners as herein before is mentioned, that is to say, on the 28th Day of March 1733, the Plaintiffs Commissioners wrote a Letter to the Defendant's Commissioners, telling the Defendant's Commissioners that though they the Plaintiffs Commissioners did not punctually attend the said 3d of February, according to their Adjournment, that yet, that Afternoon, they

were ready to attend and had given the Defendant's Commissioners Notice thereof, and also served the Defendant's said Commissioners with a Notice to meet the 5th of that February, but that the Defendant's Commissioners had refused to attend, insisting on the said Failure in the Plaintiffs Commissioners; and by such Letter the Plaintiffs Commissioners gave the Defendant's Commissioners Notice that they would be ready to meet at Newcastle, on the 16th Day of April then next; in Answer to which Letter of the Plaintiffs said Commissioners, the Defendant saith he hath been informed by his said Commissioners, and believes it to be true, that his Commissioners sent to the Plaintiffs Commissioners a Notice, in Writing, reciting their former Default, and the Defendant's said former Letter offering to renew their Meeting (under a Reservation of his Benefit to the Forfeiture) and giving the Plaintiffs Commissioners Notice that they the Defendant's Commissioners would attend and meet them, at Joppa, the first Monday in May, agreeable to the Defendant's said Offer to them in his said Letter.

Hath been informed, and believes it to be true, that on the said 7th, and also on the 8th and 9th of May 1733, the Commissioners, on both Sides, accordingly met, at Joppa, when the Defendant's Commissioners asked the Plaintiffs Commissioners if they had procured the Opinion of any skilful Mathematicians on the Question in Dispute between them at their former Meeting? Upon which the Plaintiffs Commissioners insisted there was no manner of Occasion, either to consult with Mathematicians, or to regard the Charter of Pensilvania, or Deed of Feoffment of Newcastle, in relation thereto, but only to pursue the Directions of the second Article of the Agreement: but the Defendant's Commissioners then insisted, as they had before at their former Meetings, that the said second Article of the Agreement had plain Reference to the said Charter and Deed of Feoffment, and that they must insist on explaining the Nature of the Circle to be drawn agreeable to such Reference, and the Opinion of their Mathematicians, unless the Plaintiff's Commissioners would satisfy them of the Error of such Opinion with that of other Mathematicians, which the Plaintiffs Commissioners refused to do, and after a very long Debate, as the Defendant hath been informed and believes, it was agreed between the Commissioners, on both sides, to meet at Mr. Norris's, in Philadelphia, on the 21st Day of May: with this Proviso that, if the Defendant's Commissioners could not, with Conveniency, return from Burlington, where they were going, so as to meet on that Day, then the Plaintiffs Commissioners agreed, on Notice given them by the Defendant's Commissioners of a Day to meet, at the same

Place, before their return to Maryland, they would meet them, at such Time and Place, accordingly, and that if, after such Meeting and Stay of the Defendant's Commissioners in Philadelphia with the Plaintiffs Commissioners one Day, they could not readily agree upon an Adjournment, that then, the Defendant's Commissioners should not be longer detained from returning to their respective Homes, they the Defendant's Commissioners accepting a Notice, in Writing, to be delivered to any of one them, to meet the Plaintiffs, at Mr. Paterson's, in Newcastle County, the 18th Day of June then next.

Hath, in like manner, been informed and believes it to be true, that the Defendant's Commissioners not returning from Burlington so as to meet on the 21st of May, they the Defendant's Commissioners did, according to their said last mentioned Agreement, on the 25th of May send a Notice in Writing, to the Plaintiffs Commissioners, to meet them, at Mr. Norris's, on the next Day, being the 26th of May, at 10 of the Clock in the Forenoon.

Hath likewise heard, and believes, that, on the said 26th of May, the said Commissioners, on both sides, accordingly met, and, in regard the Defendant's speedy Departure for England rendered it very inconvenient for the Defendant's Commissioners to meet in June, as was before agreed on, and the Heats of the Months of June and July being such as would render the attending running the Lines very unsafe, the Commissioners, on each Side, agreed to meet, at the Town of Newcastle, on the 3d of September then next, in order to the running, and marking out the Lines according to the said Articles of Agreement.

Hath been informed, and believes it to be true, that, on the said 3d of September 1733, the said Commissioners, on both Sides, accordingly met, at Newcastle, and continued together that Day and also the three next Days following; all which Days, as the Defendant hath been informed and believes, were spent in debating what were the Dimensions of the Circle intended to be run? the Defendant's Commissioners insisting, agreeable to the Opinion of their Mathematicians, that the Circle to be run and marked out was the Circle mentioned and described in the Deed of Bargain and Feoffment of Newcastle and no other, and which they were informed and convinced, (as they have informed the Defendant and as the Defendant believes) by their Mathematician was such a Circle whose Circumference or Periphery is 12 Miles, and whose Diameter is somewhat less than four Miles, whereas the Plaintiffs Commissioners insisted the Circle to be run must be a Circle to be drawn at the Distance of 12 Miles from Newcastle, and that such a Circle whose Radius was 12 Miles was the only Circle they could run, and the Plain-

tiffs Commissioners insisted to reject all Assistance from Mathematicians, as needless and unnecessary, and the Defendant's Commissioners, and the Plaintiffs thus differing, in their Sentiments, about the Dimensions of the Circle directed to be run by the second Article of the said Agreement, the Commissioners, on both Sides, agreed to and did adjourn for further Consideration of the Premises in Question, to the 14th Day of the then next November.

Hath in like manner been informed by his said Commissioners, and believes it to be true, that, on the 14th Day of November 1733, the said Commissioners, on each Side, met according to their said last Adjournment, and the same Differances in Opinion still containing between them, that and the two next Days, and they not being able to agree in the Dimensions of the Circle to be run, the Defendant's said Commissioners, on the 16th Day of the same November, finding that nothing could be done, with any effect, with respect to the running the said intended Circle, proposed to the Plaintiffs Commissioners to go to Cape Hinlopen, in order to proceed as far as they could towards the Execution of the said Agreement, and in running the East and West Line directed by the said third Article to be run from thence: but which, the Defendant hath been informed by his said Commissioners and believes, the Plaintiffs Commissioners refused to agree to, till the running the Circle directed by the said Articles of Agreement was first done and completed.

Hath been informed, and believes, the said Commissioners, on each Side, continued sitting till the 24th Day of the same November, and neither receding, but each persisting, in their Opinions, and the Plaintiffs Commissioners refusing to take the Advice and Assistance of the Mathematicians for their Guide and better Information as the Defendant's Commissioners frequently offered them and were desirous of doing, the Defendant's Commissioners were oblig'd, seeing nothing could effectually be done, at last to consent with the Plaintiffs Commissioners to break up their Meeting without any further Adjournment, and accordingly, as the Defendant hath been informed and believes, on the said 24th Day of the said November, an Instrument was drawn up, which was in the following Words (viz.)

Whereas by Articles of Agreement, made the 10th Day of May 1732, between the Right Honourable Charles Lord Baltimore, Proprietor of the Province of Maryland, on the one Part, and the Honourable John Penn, Thomas Penn, and Richard Penn, Esqrs. Proprietors of the Province of Pensilvania and Counties of Newcastle, Kent and Sussex upon Delaware, on the other

Part, it was agreed and concluded that a certain Circle, in the said Articles mentioned, or so much thereof as should be requisite, and also that a due East and West Line, should be drawn, across the Peninsula mentioned in the said Articles or so much thereof as should be requisite; such East and West Line to begin, at Cape Hinlopen in the said Articles mentioned, and that, from the Western Point or End of the said East and West Line, which Western Point or End shall be just half-way a-cross the said Peninsula, a strait Line shall run Northward up the said Peninsula (and above the said Peninsula, if it requires it) till it shall so touch the Western Part or Periphery of the said Circle as to make a Tangent thereto, &c., and divers other Lines, in the said Articles also mentioned, should be run, marked and laid out before the 25th Day of December, in the Year 1733, by certain Commissioners, to be respectively appointed for the said purpose. And whereas the said Lord Proprietor of Maryland, on his Part, by his Commission, dated the 12th Day of the said Month of May, made in pursuance of the said Articles of Agreement, and duly executed, did appoint the Honourable Samuel Ogle Esq., Lieutenant-Governor, the Honourable Charles Calvert Esq; Philemon Lloyd, Michael Howard, Richard Bennet, Benjamin Tasker, and Matthew Tyllghman Lloyd Esqs; or any six, five, four or three of them, to be his Commissioners, for the Purposes in the said Articles mentioned.

And whereas the said Proprietors of Pensilvania and said Counties, by their Commission, dated the same 12th Day of May, made in pursuance of the said Articles of Agreement, and duly executed, did, in like manner, appoint the Honourable Patrick Gordon Esq., Governor, Isaac Norris, Samuel Preston, James Logan and Andrew Hamilton Esqrs. and James Steele and Robert Charles Gent. or any six, five, four or three of them, to be their Commissioners, for the Purpose in the said Articles mentioned.

And whereas six of the said Commissioners on the Part of Maryland, viz. the Governor of Maryland, Charles Calvert, Philemon Lloyd, Michael Howard, Richard Bennet and Matthew Tyllghman Lloyds Esqs. and six on the Part of Pensilvania viz. the Governor of Pensilvania, Isaac Norris, Samuel Preston and Andrew Hamilton Esqs; and James Steele and Robert Charles Gent. did, on the 6th Day of October 1732, meet, at Newtown in the County of Kent, in Maryland, and from thence adjourned to the 30th Day of the same Month, to meet at Newcastle, in order then to proceed to mark out the Circle in the said Agreement mentioned, and accordingly six of the said Commissioners on the Part of Maryland, and all the Commissioners on the Part of Pensilvania, met at Newcastle, on the said 30th

of October, and have there had divers Conferences, for some Days, about the Execution of the said Articles adjourned to a further Day.

And whereas, because of the Indisposition of the said Richard Bennet, one of the Commissioners for Maryland, the Lord Proprietor of the said Province and chief Governor thereof, then executing in Person the Powers of Government in Maryland, found it necessary to appoint Edmund Jennings Esq; to be one of his Commissioners in the Place of the said Richard Bennet, for the Purpose in the said Articles mentioned, pursuant to Powers reserved to each Governor for such Purposes; also, by reason of the Death of the said Philemon Lloyd Esq; and of the indisposition of said Charles Calvert Esq; the Honourable Samuel Ogle Esq; Lieutenant-Governor of the said Province of Maryland, after the Departure of the Lord Baltimore out of his said Province, in pursuance of the Powers aforesaid, in the said Articles or Commission made for that Purpose, found it necessary to appoint others, and accordingly by his Commission, duly executed, dated the _____, did appoint John Ross Esq; in the Place and Stead of the said Charles Calvert, and by his Commission, dated the _____, duly executed, did, in like manner, appoint James Harris Esq; in the Place and Stead of the said Philemon Lloyd, to be Commissioners for the Purposes aforesaid.

And whereas, after the aforesaid Meeting at Newcastle, divers Appointments and Adjournments having been made, and sundry Propositions and Debates, at their several Meetings, past, five of the said Commissioners on the Part of Maryland, viz. the Honourable Samuel Ogle Esq; Benjamin Tasker, Edmund Jennings Esqs; John Ross and James Harris Esqs; and five Commissioners on the Part of Pensilvania, viz. Isaac Norris, Samuel Preston, James Logan and Andrew Hamilton Esqs; and James Steele Gent. pursuant to their last preceding Adjournments, met, at the Town of Newcastle, on the 14th Day of this Instant November 1733, were, resuming their former Debates, and making divers Propositions to each other, on both sides, from the said 14th to this 24th Day of the said November, each Side continued to persist in their former Opinions, that is, the Commissioners on the part of Pensilvania insisted, as they always had done, on running and marking out a Circle, or so much thereof as should be requisite, at the Distance of 12 English Statute Miles from the town of Newcastle, as in the second Article of the Agreement is directed, as the only Circle they conceived themselves impowered to run; and the Commissioners for Maryland, on their Part, insisted, as at

former Meetings they had done, upon running a Circle, or so much thereof as should be requisite, whose Periphery or Circumference is 12 Miles, as the only Circle meant in the Deed of Bargain and Sale and Deed of Feoffment for Newcastle, and as the only Circle, intended by the Proprietors in the said Articles, which Circle the Commissioners of Maryland conceived themselves only impowered to run.

And that, under this Difference of judgment (the Commissioners of Pensilvania having refused to proceed to Cape Hinlopen, in order to fix the Cape, and run the East and West Line, because they say, for the Reasons by them assigned, it could be to no manner of purpose) the Commissioners of Maryland were of Opinion that no other Consequence can arise than, either, the Commissioners should continue at Newcastle until the said 25th of December next, without running the said Circle about Newcastle, or, depart from Newcastle without further Adjournment; and as the last 11 Days, since the 14th of this Instant inclusive, have passed in Debates that have not, in the least, tended to any nearer Agreement between the Commissioners, and the Time, limited for executing the said Articles, is now so near expiring that, even, with the utmost Industry and Application, it would, scarce, by any means, be found practicable to run and mark out and fix all the several Lines in the Articles agreed and required to be done.

Wherefore, upon the whole, the Commissioners, on both Sides, under these Circumstances, agree that it cannot Answer any of the Purpose intended by the said Articles to continue longer together, and, therefore, think it proper to depart without further Adjournment, and leave the Conduct of the Commissioners, on both Sides and their Endeavours used towards the Execution of the aforesaid Articles of Agreement to the justice and Wisdom of their Superiors. Samuel Ogle, Edmund Jennings, Benjamin Tasker, John Ross.—Isaac Norris, James Logan, Samuel Preston, A. Hamilton.—— Done at Newcastle, Nov. 24. Anno Domini 1733. In Presence of David French, Jos. Wood, S. Bourn.

Which Instrument, as the Defendant hath been informed and believes, was jointly signed by the Commissioners on both Sides, and accordingly, the 25th of December 1733 came without any thing first being done towards running the said Line or Circles or performing the said Agreement.

Saith that he cannot, either as to his Knowledge, Information or Belief, in any other manner, set forth the several Matters and Transactions that passed and were had between his Commissioners and the Plaintiffs Commissioners, than as herein before is particularly mentioned and set forth, save and except

that he hath received, from his own Commissioners, several Papers, purporting to contain an Account of what passed between the Defendant's Commissioners and the Plaintiff's Commissioners at several of their said Meetings, being Copies as the Defendant is informed and believes, of several Papers that were delivered by the said Commissioners on each side to each other at several of their Meetings, Copies of all which Papers the Defendant, for the Plaintiffs further Satisfaction, hath set forth by way of Schedule to this his Answer, and prays that the same may be taken as part thereof.

Saith he arrived in New-England on the 3d Day of September 1732, from whence he proceeded directly to Maryland, and got there on the 14th Day of November following.

Denies he knows, or believes, or ever heard, that his Commissioners made all or any of the Cavils or Objections in the manner as by the Bill is set forth, or that they acted in any other manner than as herein before is mentioned, and denies that he was knowing of, or privy to, all, or any, pretended Designs of his said Commissioners, or to what they had done, or intended to do, till such time as they gave or sent this Defendant an Account of what had passed at their said Meeting.

Denies that he previously advised, consented to, directed, approved, or was acquainted with, any of his said Commissioners Doubts, Scruples, and Objections, made by his said Commissioners at their Meetings as before set forth, or knew any thing, or was any ways apprized thereof, till after the same had really and in fact happened, until he received an Account thereof from his said Commissioners, and of what had passed at their said Meetings in the manner before set forth.

Denies that he knows, or in his Conscience believes, or has ever been informed, that it was the Intention and Resolution of all, or any, or either of his said Commissioners, to defeat and prevent the running out the Lines aforesaid, agreed upon by the said Articles, in the manner as by the Bill is set forth.

And denies that his said Commissioners, or any or either of them, after the Execution of the said engross'd Articles of the 10th of May 1732, in any manner endeavoured to persuade the Defendant not to compleat and perform the same, or to his Knowledge or Belief acted in any other manner than as herein before is particularly mentioned and set forth.

Denies that he was, by any means whatsoever, brought, or induced to wish, or desire, or intend, that the said Agreement might, or should not, be carried into Execution, till such times as he was clearly convinced he had been greatly imposed upon therein by the Plaintiffs.

Denies that he ever, until after he had discovered the Impo-

sition put upon him, and which he discovered during his so being in Maryland, consulted, conversed, or advised with, any Person whatsoever, how the Execution of the said Agreement of May 1732 might be avoided or evaded, as pretended and set forth in and by the Bill; but after such Imposition discovered, and after his Arrival in England from Maryland, he admits he took the Opinion of several Counsel thereon.

Neither knows, nor hath heard, of any other Objections or Difficulties that were started by his Commissioners, with respect to the several Matters under their Consideration, than as herein before is set forth; and denies that such Objections were made, or insisted on, with or by his Privy or Direction; nor had he any Knowledge or Information thereof, till he received an Account thereof from his Commissioners in the manner before-mentioned.

Saith he does approve of the said several Proceedings of his said Commissioners, in the manner as herein before set forth; the same being consistent with, and agreeable to his own real Opinion, and the Justice of the Case, as he verily believes.

Saith that, from the Information he hath received, and the Representation that hath been made to him of his Commissioners Behaviour and Proceeding, he in his Conscience believes that his said Commissioners acted, in all things, with that Candour, Fairness, and Dispatch, which he himself intended and agreed they should do at the time when he executed the said Agreement on the 10th of May 1732.

Saith that in regard he was over-reached by the Plaintiffs in the said Agreement, and greatly deceived and misled therein by the Map or Plan upon which the said Agreement was founded, he is not desirous that the said Agreement of the 10th of May 1732 should be executed and fulfilled, but, on the contrary, hopes, for the Reasons before-mentioned, the same shall not be carried into Execution. And in case this Court should be of Opinion, that the said Agreement ought to be carried into Execution, in that Case, is advised and insists that the Circle, thereby agreed to be run about the Town of Newcastle, ought to be a Circle whose Periphery only is 12 Miles, and whose Semi-diameter is two Miles; and not a Circle whose Semi-diameter is 12 Miles, as the Plaintiffs insist upon.

Denies that, at any of the several times of his producing and reading his said Notes or Proposals, pending the said Treaty with the Plaintiffs, and before the said Agreement with them, or at the time of executing the said Agreement with them, on the 10th of May 1732, he meant, or intended, that the said Circle, agreed upon, should be a Circle whose Semi-diameter was to be 12 Miles, as by the Bill is pretended.

Believes the Commissioners, on each Side, in case no such Difference in Judgment had arose between them as is before set forth, might, within the Space of four Weeks, at a proper Season of the Year, have mark'd and run out the Circle, and Lines, mentioned in the said Agreement of the 10th of May 1732.

Admits he did cause to be presented, to his present Majesty, a Petition in his own Name, on the 8th of August 1734, as in the Bill, praying a Confirmatory Grant of such Parts of the said Peninsula as are contained within the Limits of his said Charter, notwithstanding the words *Hactenus inculta* inserted in the recital of the said Charter.

But denies that he either knows, or believes, that any falsities were alledged or set forth in such his Petition to his Majesty, or that any Matters or Things that were necessary, on his part, to be laid before his Majesty were omitted, as is pretended by the Bill.

Saith that the Reason why he did not mention in his said Petition neither the Plaintiffs, nor their Father, nor the said Province of Pensilvania, nor the said three Lower Counties by Name, nor set forth any thing relating to the said Agreement of May 1732, was, because, as he was advised, such Matters were no ways material or pertinent to be set forth in such his Petition to his Majesty as aforesaid.

And the Reason why he inserted in his said Petition that there was such a Report or Order in Council of the 4th of April 1638, relating to William Clayborne and the Isle of Kent, was, because such Order appears entered in the Books as of Record at the Board of Trade, and because he, and his Agents concerned for him, thought it was necessary to be stated in his Petition, and pertinent to the Prayer thereof.

And denies that he either knows, or believes, that any thing was purposely omitted, or concealed, in his said Petition, either with respect to the Report of the Committee for Trade and Foreign Plantations in 1685, as by the Bill is pretended, or in any other respect whatsoever.

Saith that, for ought he knows to the contrary, the Plaintiff John Penn might be gone for America, at the Time the Defendant presented his said last mentioned Petition to his Majesty, but the Defendant did not know the same, his going from England being in a secret and private Manner; besides, one of the Plaintiffs was then, and still is, in England; but denies that he purposed, or expected, any advantage whatsoever to himself, by the Absence of the Plaintiffs John and Thomas Penn.

Admits he did present the said last mentioned Petition to his Majesty in order to obtain a Confirmatory Grant of the said

three Lower Counties for himself, and for his own Use, Benefit and Advantage, and not as a Trustee for the Plaintiffs, the Defendant apprehending the Plaintiffs had no manner of Right or Title thereto, and that the same were clearly comprized within the Limits of his said Original Charter of Maryland.

Denies that he either knows, or believes, or knew, or did believe, at the Time of his presenting his said Petition to his Majesty, that his Majesty, upon a fair and full Representation of the whole Case, as is pretended by the Bill, would not grant it; or that he the Defendant, for that, or any other Reason, concealed or omitted any Matter or Thing whatsoever in his said Petition, or which the Defendant thought necessary or material to be set forth.

Saith the Reason why he did not take any Notice, in his said Petition to his Majesty, of any Improvements pretended by the Plaintiffs to have been made in the said Three Lower Counties, or the Plaintiffs pretended Possession of them, was, because he did not know, nor was privy, nor does he now know, of any Improvements that had been made by the Plaintiffs thereon; and for that such a limited Possession as the Plaintiffs have had in the said three Lower Counties was, in the Defendant's Apprehension, no manner of Evidence at all of their Right or Title thereto, or their Property therein, and therefore the Defendant did not think it any ways material or necessary to be stated; nor doth he know or believe that it was any ways necessary, material or proper, to have stated in his said Petition any of the Facts, or Matters, in the Bill, pretended, and untruly alleged, to have been designedly or otherwise omitted or concealed therein; nor was the same, to the Knowledge or Belief of the Defendant, drawn or framed with any such Design or View as is suggested by the Bill; on the contrary saith, he assuredly believes, if his Agents, or the Persons concerned for him in soliciting the same, had thought any of the Facts or Matters, by the Plaintiffs pretended to have been omitted therein, were necessary or proper Facts to have been stated therein, or that their not stating the same could with any colour of Reason have been imputed as a Design or Intention in them, or in the Defendant, of imposing upon their Lordships by that means, or misguiding their Lordships Judgment, as the Plaintiffs ridiculously insinuate, they would certainly, and of their own accord, have stated and represented the same fully to their Lordships.

Denies that he took, or intended to take, any Advantage of the Absence of the Plaintiff John Penn, at the Time of his presenting such his last mentioned Petition to his Majesty: nor did the Defendant, with any such View, or designedly, take that Op-

portunity of presenting it rather than before, as is insinuated by the Bill; but saith he caused the same to be presented as soon as possibly he could after his return to England from Maryland, without any regard to the Absence or Presence of the said Plaintiff John Penn. And saith that the said Plaintiff John Penn's Departure was unknown, and unheard of, by the Defendant, till long after he was gone: and the Defendant was so far from being privy or acquainted with his Departure, that the Defendant hath been credibly informed it was very sudden and private, even in the City of London, where he resided.

Defendant saith that such his Application to his Majesty, by Petition as aforesaid, was far from being unknown, unforeseen, or a Surprize upon the Plaintiffs, as by their Bill is suggested, for that the Defendant himself personally acquainted Mr. Paris, the Plaintiffs Agent and Sollicitor, with his Intention of applying to his Majesty, as he afterwards did by his Petition in the manner before-mentioned, before the same was presented.

Saith that the Reason why he apprehends it was necessary and material in his said Petition to his Majesty, as herein before is mentioned, to set forth and take Notice of the Report or Order in Council, of the 4th of April 1638, relating to the Isle of Kent, was, for that the said Isle of Kent, which was the Subject-Matter and Occasion of that Order, lies on the Western Side of the said Peninsula, and is only divided therefrom in one Part, by a narrow Run of Water, and in regard that Order directs no Grant should be made of any Lands within the Limits of the said Maryland Charter, although it was then suggested that the Isle of Kent was inhabited, the Defendant was, therefore, advised it was pertinent to his said Petition to his Majesty, and proper to be inserted therein, which only prayed for a Confirmation, from the Crown, of the Lands within the Limits of the said Maryland Charter; their Lordships Opinion appearing, upon the Face of the said Order, to have been that the said Isle of Kent was comprized within those Limits.

Saith he did not apprehend, nor was he advised that it was any ways necessary, or pertinent to the Subject-Matter or Prayer, of his said Petition to his Majesty, to set forth, or take any notice of, the Plaintiffs pretended Possession of the said three Lower Counties, in regard such a Possession as the Plaintiffs have had and enjoyed therein would be no manner of Evidence, nor is any Evidence, as he humbly insists and is advised, of any such Right or Property in the said three Lower Counties as the Plaintiffs set up or pretend: Nor could it any ways shew that the Plaintiffs had any manner of Right or Title thereto whatsoever: Nor have the Plaintiffs, as they state it themselves by their Bill, received any Quit-Rents from any of the Inhabi-

tants of the said three Lower Counties under such their pretended Possession; which, as the Defendant is advised and insists shews that the Inhabitants of the said three Lower Counties never looked upon, or acknowledged, the Plaintiffs, as the Defendant humbly conceives and is advised, as their Proprietor, nor esteemed the said three Lower Counties, or any Part of them, as a Part of, or belonging to, the Plaintiffs said Province of Pensilvania, or to be comprized within the Limits of their Pensilvania Charter; but, on the contrary, to be distinct therefrom, and to belong to, and be Part of, the Defendants said Province of Maryland, or, otherwise, to be the Right of the Crown, and no ways to be the Right of, or belong to, the Plaintiffs.

Saith he did not, in his said Petition to his Majesty, state the Agreement of 1732 between the Defendant and the Plaintiffs; and the Reason he did not was, because, he was advised and apprehended, and still humbly apprehends, the same was no ways necessary or material to be stated: The said Agreement, as he is advised and insists, being lapsed in point of Time, and void, by a particular Clause in the said Agreement, and not being carried into Execution within the Time prescribed by the said Articles for that purpose.

Saith that his said last Petition to his Majesty being, by his Majesty's Order in Council of the said 8th of August 1734, referred to the Lords Commissioners for Trade and Plantations, to consider the same, and to Report their Opinion thereon, the same was, afterwards, on the 28th of the same Month, laid before that Honourable Board; and the said Lords Commissioners of Trade and Plantations, on the very next Day, being the 29th of the same August, were pleased, as the Defendant hath heard and believes, to give Notice of the Defendant's said Petition being so laid before them for their Consideration, to Mr. Paris, the Plaintiffs Agent and Sollicitor, by a Letter, from their Secretary, of that Date; and likewise acquainted the said Mr. Paris, at the same Time, that they had appointed the 18th of the next Month, being September 1734, to take the Defendant's said Petition into their Consideration.

And saith that their Lordships were, afterwards, pleased to prolong the Day for taking the Defendant's said Petition into their Consideration, to the 16th Day of the Month of October 1734, and of which Mr. Paris the Plaintiffs Agent had due Notice.

And saith that, on the said 16th of October 1734, the Day appointed by the Board of Trade for taking his said Petition into their Consideration, the said Mr. Paris appeared before the said Lords of Trade and Plantations, as Agent for the Plaintiffs

in Opposition to the Defendant's said Petition, and, as the Defendant has heard and believes, prayed further Time of their Lordships, alledging that he had not an Opportunity of preparing his Briefs for Council, or perusing the necessary Papers for that purpose; and, at the same Time, acquainted their Lordships that he had, long before, and immediately upon receiving their Lordships Notice by their Secretary, sent the Plaintiffs, his Clients, an Account of the Defendant's said Application to his Majesty, and which had been referred to their Lordships for their Consideration; but that, as the said Mr. Paris was thoroughly acquainted with the whole Affair, he should not wait any Answer from Philadelphia, but only desired a Fortnight's time for the Purpose before-mentioned; upon which their Lordships, in the Presence of the said Mr. Paris, and at his Request as aforesaid, were pleased to appoint the Monday following, for another Attendance on the said Petition, in order only that a Beginning might be made, and acquainted Mr. Paris that they would, then, adjourn to a further Time, to hear any Arguments he, or his Council, might offer on the Case depending before their Lordships on the Defendant's said Petition; and the said Mr. Paris, upon such last mentioned Attendance before the Lords of Trade on the 16th of October 1734, informing their Lordships that he intended to present a Counter Petition to his Majesty on Behalf of the Plaintiffs, and in Opposition to the Defendant's said Petition; their Lordships were pleased to acquaint Mr. Paris, that their Lordships were ready, and would hear any thing he the said Mr. Paris, or his Council, thought fit to object or offer, either in Opposition to the Defendant's said Petition then under their Consideration, or in Support of the Plaintiffs Title to the said three Lower Counties; to which Mr. Paris then replied, that, as he knew that to be the Sense of the Board, he would desist from presenting any such Counter Petition to his Majesty as he had before purposed to do, and promised to take notice of their Lordships further Appointment for the Monday following.

And accordingly the Defendant saith, on the said Monday following, being the 21st of the same October, the said Mr. Paris attended the said Board with Counsel, and the Plaintiff Richard Penn was present, likewise, and prayed further time of their Lordships to be heard till the 20th of December following, when, they assured their Lordships, they would then, certainly, proceed, without asking any further time, and without any further delay, and with which time their Lordships were further pleased to indulge them.

Saith that, on the said 20th of December following, the Defendant again attended the said Lords of Trade and Plantations,

and was heard, by himself and Counsel, in Support of his said Petition; and the same not being gone through upon that Attendance, was, afterwards, heard again by their Lordships, in the same manner, upon the 31st of the same December; but the said Mr. Paris, who had kept their Lordships in suspense all that time, in expectation of laying the Plaintiffs Pretensions and Title to the said Counties before their Lordships, and had, upon that Account, delayed their Lordships taking this Defendant's said petition into their Consideration from Time to Time, declined laying the same before their Lordships, or appearing in Support of their pretended Right, and only stood by to take notice of what passed and what was offered by the Defendant and his Counsel; upon which their Lordships, after having heard the Defendant and his Counsel, in Support of his said Petition, that is to say, on the 16th of January 1734, made their Report to his Majesty among other Things, setting forth the Substance of the Defendant's said Petition, and humbly acquainting his Majesty, that the Lands in question, commonly called the three Counties on Delaware River, supposed to be excepted by the Words *Hactenus inculta*, appeared to their Lordships to be included in the Limits of this Defendant's Charter, but they having been in the Possession of the Plaintiffs Family, for several Years, their Lordships thought it proper to communicate the Defendant's said Petition to the Plaintiffs Agent, that they might have an opportunity to lay before their Lordships what they thought proper in relation to the said Petition, and to the Plaintiffs Title to the said Lands; and their Lordships were likewise pleased, in their said Report, to set forth, that they had been frequently attended by the Plaintiffs Agent, and by the Plaintiff Richard Penn, who had promised to lay an Account of the Plaintiffs Title before the Board, but that, after having kept their Lordships in expectations thereof for several Months, they, at last, refused to proceed therein, whereby their Lordships were disabled from offering any Thing to his Majesty relating to their Claim, except that they found, by their Books, that, for some time past, whenever the Plaintiffs, the Proprietors of Pensilvania, had nominated a Person for the Approbation of the Crown to be Deputy Governor of that Province, and of the said three Lower Counties, they have given Declarations, under their Hands and Seals, which are extant in their Office from 1702 to the last Nomination in 1733, whereby they acknowledge and agree that the said Approbation shall not be construed, in any manner, to diminish or set aside the Claim made by the Crown to the said three Lower Counties; and their Lordships were, likewise, pleased further to set forth, by their said Report, that, upon the Plaintiffs refusal to proceed therein, their Lord-

ships thought it their Duty to examine the several Facts set forth in the Defendant's said Petition, and thereby alledged by the Defendant as a Ground for his Hopes of his Majesty's favour; and begged leave to acquaint his Majesty that they, thereupon, found that there was no room to doubt the Lands in question were comprized within the Limits described by the said original Charter of Maryland dated the 20th of June 1632; and their Lordships, likewise in their said Report, further set forth that they had examined the ancient Records of their Office, and found the Order of Council of the 4th of April 1638 herein before-mentioned, and set forth (which recites the Purport of a former Order dated the 3d of July 1663, [Note, he means 1633] upon Clayborne's Petition) and whereby their Lordships found the Sense of the Council, then, was, that the Right and Title to the said Isle of Kent, and the other Places therein, then in question, absolutely belonged to the Lord Baltimore; and their Lordships, by their said Report, further stated to his Majesty, the said Original Order in Council of 1685 herein likewise before-mentioned and set forth) for dividing the said Counties, and declaring one half thereof to belong to his Majesty, and the other half to the Lord Baltimore, as comprized within his Charter; and that the said last mentioned Order of 1685, was ordered to be carried into Execution, soon after the late King James's Accession to the Crown, and was confirmed by the late Queen.

Whereupon, their Lordships observed to his Majesty that the Sense of the Crown, and the Lords of the Council, in those several Decisions, seemed to have been governed by the Purport of the Words *Hactenus inculta*, but, notwithstanding these Words were in the Preamble, yet, they were not inserted by way of Restriction in the body or granting Part of the Defendant's said Charter; and, as the Authorities seemed, to their Lordships, to be equal, with regard to the Interpretation hitherto given them, so their Lordships submitted it to his Majesty, whether the Sense in which they were understood by the Privy Council in 1683, [Note, Here he again means 1633] and 1638, being so soon after the Date of the Original Grants of Maryland, when the real Intention of the Crown in that Grant ought to have been more clearly known to the Lords of the Council, or, the latter Decision therein, and on which this Matter was again made the Subject of an Enquiry in Council so long afterwards as in 1683 and 1685, should have the Preference?

And, if it should be determined that the Right to the Lands in Question still remained in the Crown, their Lordships humbly beg leave to offer it, as their Opinion, that the Defendant had very just Pretensions to his Majesty's Favour, in Consideration

of the great Sums of Money that have been expended by his Ancestors in settling the Province of Maryland, and in bringing the Cultivation of Tobacco to perfection there, whereby the Trade and Revenue of this Kingdom have gained, and do daily receive, very great Augmentations, as by the said Report of the said Lords of Trade, to which the Defendant for his greater Certainty begs leave to refer, will more fully and at large appear.

Saith that, on the above Report of the said Lords of Trade being laid before his Majesty in Council, his Majesty was pleased to refer the same, together with the Defendant's said Petition, to the Right Honourable the Lords of his Majesty's most Honourable Privy Council.

And saith that, pending such Reference before the said Lords of Trade as herein before is mentioned and set forth, and not, withstanding their Lordships had declared, to Mr. Paris the Plaintiffs Agent, that their Lordships would hear any thing they had to offer, either in Opposition to the Defendant's said Petition, or in Support of their Title to the said three Lower Counties, and notwithstanding, upon such Declaration of their Lordships, Mr. Paris the Plaintiffs Agent assured their Lordships he would desist from presenting any Petition to his Majesty, yet, he, as the Defendant believes, preferred a very long Petition to his Majesty in Council, on behalf of the Plaintiffs, setting up a Title to the said three Counties, but praying that they might not be obliged to set forth the same, and that the Defendant's said Petition might be dismissed, and that the said Petitioners Possession and Title might be confirmed, and that they might be indulged with a reasonable time to be heard thereon: which Petition being referred by his Majesty to a Committee of Council, the Plaintiffs on the 19th of December 1734 moved their Lordships that the said Petition might be referred to the Board of Trade, but the Defendant saith that their Lordships, being acquainted with what had passed in this Affair at that Board, and being satisfied, as the Defendant verily believes, that the same was prayed by the Plaintiffs with no other View than to delay and retard the said Report of the Board of Trade, their Lordships did not see Cause to refer the Plaintiffs said Petition to the Board of Trade, declaring they would take the Plaintiffs said Petition into Consideration at the same time with the said Report of the Board of Trade, when that should be laid before their Lordships.

And saith on the 4th of March 1734 the Defendant's Solicitor moved the Lords of the Committee, as the Defendant believes, to appoint a Day for taking the above Report of the Board of Trade and the Plaintiffs said Petition into their Consideration, and likewise another Petition, that had been pre-

sented to his Majesty by the Plaintiffs Sollicitor, in the Names of several Quakers, Inhabitants of the said three Lower Counties, into their Consideration, which the Sollicitor for the Plaintiffs, as the Defendant hath been informed by his Sollicitor and verily believes, strongly opposed, praying that the Consideration thereof might be postponed, till they could have an Opportunity of hearing from Pensilvania; but which, on considering the length of time that had passed since the presenting the Defendant's said Petition and the Plaintiff's Sollicitor first having notice of it, and on the Defendant's making out to their Lordships that Ships had arrived at Pensilvania from London, and Answers to Letters, sent by such Ships, been returned within that time, their Lordships, as the Defendant believes, refused to comply with, and ordered the said Report of the Board of Trade, together with the said two Petitions, to be heard the first Committee after Easter then next.

And saith that, on the 2d of May 1735, being the first Committee after the said Easter appointed by their Lordships for hearing the said Report and Petition, the Defendant's Sollicitor again applied to their Lordships, to appoint a certain Day pursuant to their Lordships last Order for hearing this Matter, which the Defendant saith, he hath been informed and believes, was opposed by the Plaintiffs Sollicitor, but which Opposition was rejected by their Lordships, and Friday then next was appointed for taking the said whole Matter into their Lordships Consideration.

And saith that, he hath been informed and believes, the Lord President, at this last Motion, acquainted the Sollicitors that he had received a Letter, himself, from one of his Plaintiffs, acquainting his Lordship that the Defendant was by Articles bound to convey to them the Lands in Controversy, and therefore humbly hoping and insisting that their Lordships would not come to any Resolution till it was determined, in a Court of Equity, on a Bill he intended to File for a specifick Performance of those Articles, whether the Defendant was bound to perform them, or not, or to that Effect.

Saith that their Lordships of the Committee, afterwards, on the 10th of the same May, heard Council, on both Sides upon the Report of the said Lords of Trade and Plantations and the said two Petitions of the Defendant and the Plaintiffs; and their Lordships, afterwards, make a Report to his Majesty in Council, whereupon the Defendant believes his Majesty, by Order in Council of the 16th Day of May 1735 (made upon reading the last mentioned Report) was graciously pleased to order that the Consideration of the said Report of the Lords Commissioners for Trade and Plantations of the 16th of January

1734, and of the said two Petitions presented in Behalf of the Plaintiffs, or of some of the Possessors and Owners of Lauds in the said three Lower Counties, should all be adjourned, unto the End of Michaelmas Term then next, that either Party might have an Opportunity to proceed, in a Court of Equity, to obtain Relief upon the said Articles of Agreement, as they should be advised; and that, after the Expiration of the said Term, either Party should be at liberty to apply to the said Committee of Council, as the Nature of the Case might require; but the Defendant, for his greater Certainty herein, begs leave to refer to the said last mentioned Order and Report.

Saith that the Plaintiffs had full and due Notice, by their Agent, in the manner herein before mentioned, both from the Defendant himself, and the Secretary to the Lords Commissioners for Trade and Plantations, of the Defendant's Application.

Denies that he either knows, or believes, that such Notice thereof to the Plaintiffs said Agent from the Lords of Trade was accidental, as is pretended by the Bill, but was purposely sent, and with the Defendant's Knowledge and Privity, and the Defendant believes it to be true that Mr. Paris the Plaintiffs said Agent, did, soon after his being so sent to by the Secretary of the Lords of Trade as aforesaid, attend their Lordships, and that he might, then, on the behalf of the Plaintiffs, and in the Presence of the Defendant, desire to know what it was that the Defendant prayed for by his said Petition? And that the Defendant might, then declare, in his Answer thereto, that he then petitioned for a confirmatory Grant of the said three Lower Counties, or to that Effect; and that, upon the Plaintiffs desiring time of their Lordships as is before mentioned, the Defendant, plainly foreseeing it was intended for delay, as it afterwards evidently appeared as the Defendant humbly apprehends, he the Defendant did oppose the same, in the manner herein before mentioned, but in no other manner whatsoever.

[NOTWITHSTANDING ALL THIS DENIAL THE BILL IS
MOST PRECISELY TRUE.]

Denies that he either knows, or believes, or ever heard, save from the Bill, that any such pretended blank Paper unauthenticated, or not signed, was offered to the said Lords Commissioners on the Defendant's Behalf, at their Hearing the Defendant's said Petition, as an authenticated Office Copy of the said Order in Council of the 4th of April 1638, as is scandalously suggested and insinuated in and by the Bill; or were their Lordships, any ways, imposed upon, or deceived, therein, or took any Papers whatsoever that was or were offered to their Lord-

ships as a real Copy of any Order in Council, or other Proceedings whatsoever, which really and in Fact was not so.

Saith he apprehends, and is advised, that it appears from the Report of the said Lords of Trade of the 16th of January 1734, and from the Records in the Office, that there was such an Order in Council of the 4th of April 1638 as is before mentioned, though the Plaintiffs are pleased to alledge there was not.

[AND YET, IT IS MOST UNDOUBTEDLY TRUE THAT
THEY HAVE OMITTED THE VERY HEART OF THAT
DETERMINATION.]

Denies that he either knows, or believes, that the said Report of the said Lords of Trade of the 16th of January 1734 was founded chiefly on the said Order in Council of the 4th of April 1638, or that their Lordships, in their said Report, omitted to state any part of his Majesty's Determination in 1685, as is suggested by the Plaintiffs said Bill; the said Report being to the Effect herein before set forth, and to no other Purport or Effect to the Knowledge or Belief of this Defendant.

Saith that he hath heard and believes after the expiration of the time mentioned in the said Articles of Agreement for running the Lines was expired, the Plaintiffs might receive an Account of the Uneasiness and Dissatisfaction of the Inhabitants of the said three Lower Counties were under, at the said Lines not being run.

And believes it is very likely the Plaintiffs Affairs would have been in a much better Condition if the Plaintiffs could have intitled themselves to the Advantages of that Agreement.

And also believes that the Tenants and Occupiers of Lands in the said three Lower Counties have, and do refuse, to pay any Quit-Rents to the Plaintiffs; but not for the Reasons in the Bill mentioned; for he hath heard and believes they always refused to pay the same, as well before, as since the said Articles of Agreement, and that they never have paid Quit-Rents to the Plaintiffs or their Ancestors.

Denies that he had several, or any, Conferences with his said Commissioners, or any of them, as is pretended by the Bill, in order to contrive how to evade the said Agreement, or that many, or any Proposals or Hints were given him by his said Commissioners, or any of them, for that purpose, or that any encouragements or Advantages were offered or stated to him by his said Commissioners, or any of them, or any other Person, if he would defeat the said Articles, or that he was, at last, by that means, prevailed upon to consent thereto, in the manner as is pretended and suggested by the Bill, nor did he give any Orders to his said Commissioners, or any of them, to do all that

they could to avoid the said Agreement, as is likewise suggested by the Bill.

Denies that the Letter, wrote by him to the Plaintiffs said Commissioners from Maryland upon his receiving an account from his own Commissioners of their having discontinued their Meetings, and appointing another Meeting at Joppa, in the manner herein before mentioned, was writ or sent by the Defendant as being Conscious his own Commissioners had not proceeded with Candour, or with a View to accept of Notice to revive the Meetings of the Commissioners lest he himself, and not the Plaintiffs, should incur the Forfeiture in the said Articles, or that, at the time of his writing such Letter, he had ever declared that his Commissioners should meet again, only to prevent such Forfeiture, as is untruly alleged in the Bill; on the contrary, saith he wrote such Letter to the Plaintiffs merely out of a Condescension and favour to the Plaintiffs, and not out of any pretended Sense or Belief of his having incurred the said Forfeiture by the Conduct of his said Commissioners, but at the time of Writing such Letter, in strictness, look'd upon himself intitled to the Forfeiture from the Plaintiffs by the Non-Attendance of their Commissioners in the manner herein before mentioned and set forth.

Saith that he believes it as easy, and practicable, in a proper Season of the Year, now, to run, mark and lay out, the Bound-Lines, agreed upon by the said Articles of the 10th of May 1732, as it was between the Month of October 1732 and Christmas 1733, if the said Agreement was still subsisting and in force, but which he insists and is advised, it is not, for the Reasons herein before, and hereafter, mentioned and set forth.

Believes it might take up two or three Months time to run out all the several Lines and Bounds, pursuant to the said Agreement in May 1732, in case no Difference in Judgment had arose between the Commissioners.

Saith that, soon after the Defendant's Arrival in Maryland as before mentioned, and upon his being informed of the Doubts and Difference in Opinion touching the Circle to be drawn, he declared, as he really thought, that he believed his interfering, or giving any Directions to his Commissioners, concerning the Execution of the Trust reposed in them, might thereafter be so ill interpreted as that, if he should do it in one Case, in order to reconcile such Doubt or Difference, it might be made use of to insinuate that he did it, in another Case, and upon other Occasions, to create Doubts and Differences to obstruct the Execution of the said Articles: and therefore, for that reason, he declined giving any Directions to his Commissioners, upon their Communicating such their Doubts and Difference in

Opinion to the Plaintiffs Commissioners, and left it entirely to his Commissioners, to act according to their own Judgments, without giving any Opinion or Directions, one way or other, and the Defendant, at that time, acquainted the Plaintiffs Commissioners to the same purpose, and with such his Reasons for declining to give any Directions to his Commissioners upon that Occasion.

Denies that such Difference in Opinion between the Commissioners was only pretended, or a meer Pretence, to avoid the said Agreement, as by the Bill is suggested, or that the same had been before directed by the Defendant to be made use of by his said Commissioners, as a means to spin out the time by the said Articles provided and appointed for running out the said Lines, and to avoid the said Agreement, as is likewise suggested by the Plaintiffs said Bill.

Is advised and apprehends that it appears, from the Proceedings of the said Commissioners, as herein set forth, that not running the Lines, within the time limited for that purpose, was no ways occasioned through the Default or Design of the Defendant, or his Commissioners, but through the Default and Obstinaey of the Plaintiffs Commissioners, for that, when such Difference in Judgment between the said Commissioners with respect to the Circle to be run, as herein before mentioned, happened, and the defendant's Commissioners did not Obstinateley rely on their own Judgments, but offered to take the Advice and Information of Mathematicians, and such Persons who were thought capable of convincing them, and reconciling such Differences in Judgment that had happened with Respect thereto, which the Plaintiffs Commissioners refused, although the Defendant's Commissioners, as the Defendant hath been informed and verily believes, told them that they did not intend such Advice should be so binding as to oblige the Plaintiffs said Commissioners to follow and pursue it at all Events, but only proposed it for their better Understanding the Point in Doubt, and in order to reconcile their Opinions, and put the Matter in such a light as to enable them to perform and compleat the said Agreement pursuant to the said Articles within the time allowed them by the said Articles or that purpose; and although the Plaintiffs said Commissioners thought fit to refuse and avoid the Satisfaction desired by the Defendant's Commissioners in the manner before set forth, yet, as the Defendant hath likewise been informed and verily believes, his Commissioners not only had the opinion of such Persons there, who were reputed to have a Knowledge in Mathematics, but actually laid that Opinion upon the Point in Dis-

pute, subscribed by such Persons, before such of the Plaintiffs Commissioners as were present on the Day such Default was made as aforesaid: And it likewise further appears, as the Defendant insists, that the Defendant's Commissioners, notwithstanding the said Default of the Plaintiffs Commissioners, renewed their Meetings, and when the Defendant's Commissioners perceived the Plaintiffs Commissioners so obstinate in their own Sense of the Circle, as not to agree with them the Defendant's Commissioners in receiving Information from the Mathematicians, the Defendant's said Commissioners, thereupon, several times, offered to proceed to Cape Hinlopen, in order to endeavour to agree upon and execute as much of the Articles as they could, within the limited Time for that purpose, but which the Plaintiffs Commissioners also absolutely refused.

Defendant is advised and insists that from this, and the several Papers exchanged by the Commissioners, as herein set forth, it plainly appears his Commissioners were not in any wilful Default to occasion any Delay.

And conceives that his said Commissioners were right, in their Opinion, as to the Dimensions and Nature of the Circle intended to be run by the said Agreement, the Defendant being advised and apprehending that it appears by the whole Tenor of the Agreement, as well as by the second Article thereof, that the Intention of the Parties thereto was to have no other Circle run than what was pretended to be granted and described by the Plaintiffs said Deed of Bargain and Sale or Feoffment of Newcastle, and therefore, although the Words only (of) 12 Miles were inserted in the said Articles, yet, as they were a Contradiction to the other part of the Article, and also to the whole Agreement, the Defendant's Commissioners did right, as the Defendant is advised and insists, in desiring and insisting upon the Plaintiffs Commissioners running the Circle mentioned in the Deed of Feoffment of Newcastle, rather than to insist on the Words (only of) 12 Miles, which would, by the Construction contended for by the Plaintiffs Commissioners, by a manifest Contradiction as before mentioned, destroy the whole Articles.

Is advised and conceives that the running the Circle was not necessary, the first thing in Course to be done, pursuant to the said Articles, or any other wise than that the second Article of the Agreement mentions the Circle to be run about Newcastle; for that and East and West Line, from Cape Hinlopen, might, with regard to the Execution of the Agreement, have been as well run first, as the Circle about Newcastle; but saith he hath been informed and believes that, as the running the Circle about Newcastle was placed in the first Article of the Agreement, the

Commissioners at their first Meetings considered the Execution of that; and as it was necessary to fix and determine a Center, before such Circle could be run, and as there was no Place fixed, either about, or in, the Town of Newcastle, by the said Articles, for such Center, a Question, very naturally, (as this Defendant conceives) arose, at the Meetings of the Commissioners before this Defendant's Arrival in Amercia, as before set forth, about the Place where such Center ought to be fixed.

Is advised and conceives that the greater Caution was necessary, in this Matter, in regard the Town of Newcastle (although he admits there are not many Houses in it) stands upon a large Space of Ground, and is near two Miles in length from North to South; so that there was room enough for the Commissioners to place, and vary, the Centre of such Circle from the Places where it ought to be, and as that would be a great Advantage, or Disadvantage, to the Parties, in running the Radius of such Circle more to North or South, which would materially intrench on either Party, so the Defendant is advised and apprehends it plainly appears that this was a Question which arose amongst the Commissioners before the Defendant's Arrival in Amercia, and was not any ways concerted or pre-advised by the Defendant or any of his Commissioners in order to avoid or evade the said Agreement, as is untruly suggested in and by the Bill.

Is advised and insists that the not running the said Lines by the 25th of December 1733, as provided for by the said Agreement, was not occasioned, or any ways owing to, any Default or Misbehaviour in the Defendant's Commissioners, or any of them, but to the Default and Misbehaviour of the Plaintiffs Commissioners, and from the Difference in Opinion that happened between the said Commissioners, in the manner before set forth.

Doth not admit that the said Articles of Agreement of the 10th of May 1732 do now exist, or subsist in full Force and Virtue, but, on the contrary, insists that the same are now absolutely void; and the Reason he insists the same are void are, as herein before particularly mentioned and set forth, and for that, there was a manifest Falsity introduced, as part of the Agreement, and imposed upon the Defendant by the Plaintiffs in manner before mentioned, though he is very well assured the Plaintiffs must have been apprized and knew thereof at the time of executing the said Articles of Agreement, for he saith, he hath since discovered, and it is observable, that on the Map upon which the said Agreement was founded, and which is made part of the said Agreement as is before set forth, Cape Cornelius is described to be over-against Cape May, and Cape

Hinlopen is represented to be at a considerable Distance, which is generally as the Defendant hath been informed and believes, computed to be about 20 Miles to the Southward of Cape Cornelius; whereas it is manifestly Evident from all other Maps, and is notoriously known, that the Place called the Whore-Kill was near, or at, the Place called Cape Cornelius, and the general, and received, Opinion and Understanding of People in those Parts is, and has been, for many Years past, that Cape Hinlopen was at the Point whereabouts Cape Cornelius is placed, and near where the Town or Village called the Whore-Kill is situated; and the very Deeds from the Duke of York, under which the Plaintiffs set up their pretended Title to the said Counties in Dispute, and which are recited also in the Preamble of the said Articles of Agreement, to the best of the Defendant's Remembrance, described Cape Hinlopen alias the Whore-Kill to be the same; and in regard to this manifest Falsity, and the Imposition upon the Defendant by the Plaintiffs, and for the Reasons herein before mentioned, and as the Plaintiffs, in case the said Agreement was to be carried into Execution could not make the Defendant any manner of Title, whatsoever, to such Part of the said three Lower Counties as, according to such Division, might fall to the Defendant's Share, or be deemed Part of his said Province of Maryland, the Plaintiffs themselves having, as the Defendant apprehends, no manner of Right or Title whatsoever to the said three Lower Counties, or any part thereof, and as the said Agreement the Plaintiffs so desire to be carried into Execution was a voluntary Agreement on the part of the Defendant, and without any manner of Consideration whatsoever given or allowed him for his entering into the same, and as there was no possibility of any Benefit or Advantage accruing therefrom to the Defendant, but, on the other hand, a manifest Prejudice and Disadvantage; and as the Defendant was imposed on therein, in the manner before mentioned, both with regard to the Situation of Cape Hinlopen as is before set forth, as likewise with regard to the Plaintiffs pretended Title to the said Counties, the Defendant, at the time of his entering into the said Agreement, being induced to believe that the Plaintiffs could have made the Defendant a good Title to such Parts of the said three Lower Counties as might have fallen to his Share, but which he hath, since, by Papers which have been transmitted him from America, and otherways, been plainly convinced they cannot, therefore hopes, the Plaintiffs shall not have any such Relief as is prayed by their Bill against the Defendant, and that the said Articles shall not be carried into Execution, by the Aid, Assistance or Direction of this Court, in any respect whatsoever, but shall be delivered up to the

Defendant to be cancelled, and likewise hopes that the Plaintiffs shall be decreed to pay the Defendant all the Costs and Expences, both himself and his Commissioners were at, relating to their Endeavor in executing the said Agreement of the 10th of May 1732, as likewise all other Costs the Defendant may have been any way put to by the reason of the several Matters before set forth.

And this Defendant submits whether Mr. Attorney-General, on behalf of the Crown, should not be made a Party to the Plaintiffs Bill.

Denies Combination, and concludes with the general Traverse.

THE SCHEDULE IN THE ANSWER MENTIONED, AND
THEREBY REFERRED UNTO.

Proceedings by the Commissioners appointed by the Right Honourable the Lord Proprietary of Maryland and the Proprietaries of Pensilvania for running the Lines and Bounds of their Provinces.

1732. Oct. 6-7.

An Agreement having been concluded, between the Right Honourable Charles Lord Baltimore, Proprietor of the Province of Maryland, and John, Thomas, and Richard Penns Esqs; Proprietors of the Province of Pensilvania, &c., touching the Boundaries of their respective Governments, and Commissioners being named on both Sides for executing the said Agreement, a Meeting of them was appointed, at Newtown, in the County of Kent, in Marvland, on the 6th Day of October 1732, where the said Commissioners being accordingly come, a Meeting was held, the Day following, where were present the Lieutenant-Governor of Maryland, the Honourable Charles Calvert Esq., Philip Lloyd Esq; Michael Howard Esq; Richard Bennet Esq; Matthew Tyllghman Ward Esq; the Lieutenant-Governor of Pensilvania, Isaac Norris Esq; Samuel Preston Esq; Andrew Hamilton Esq; James Steele Gent.; Robert Charles Esq;

A Commission, from the Right Honourable the Lord Baltimore, bearing Date the 12th Day of May 1732, nominating and appointing the said Lieutenant-Governor of Maryland, Charles Calvert, Philemon Lloyd, Michael Howard, Richard Bennet, Matthew Tyllghman Ward and Benjamin Tasker Esqs; or any six, five, four, or three of them, to be his Lordship's Commissioners, and a Commission from the said John, Thomas, and Richard Penns Esqs; bearing Date the 12th Day of May 1732, nominating and appointing the said Lieutenant-Governor of Pensilvania, Isaac Norris, Samuel Preston, Andrew Hamilton Esqs; John Steele, Robert Charles Gent, with James Logan Esq;

or any six four or three of them, to be their Commissioners, for running, marking, and laying out the Circle and the several Lines and Boundaries in the Agreement between the said Proprietaries specified, were produced, and read, as were likewise the Original Agreements, bearing Date the 10th Day of said May.

And the said Commissioners present did, unanimously, agree that they, or a sufficient Quorum of them, without further Notice, should meet, at the Town of Newcastle, on Delaware, on Monday the 30th Day of October Instant, in order then to proceed to mark out the Circle in the said Agreement mentioned.

Then, to wit, October the 30th 1732, his Excellency the Governor of Maryland, and Philemon Lloyd, Michael Howard, Richard Bennet, and Benjamin Tasker, Esqs; and the Governor of Pensilvania, Isaac Norris, Samuel Preston, James Logan, Andrew Hamilton, James Steele and Robert Charles Esqs; met, at Newcastle, according to the last Appointment, to run out the Circle about Newcastle, in pursuance of the second Article of the Agreement; and that Article obliging the Commissioners to run out the Circle mentioned in the Charter of Pensilvania and Deed of Feoffment for Newcastle, the Commissioners for Maryland desired the Charter, and Deed of Feoffment, might be produced, for their Direction in running out the said Circle: The Commissioners for Pensilvania, on the other hand, that, as they were recited, they were obliged to stand to that Recital, whether true or false; but, as the Commissioners of Maryland insisted that the Intention of both Proprietaries was to run out the Circle according to the Deed of Feoffment and no other, the Commissioners for Pensilvania produced their Charter, and an Exemplification of the Deed of Feoffment: The Commissioners for Pensilvania having laid it down, as a settled Point in Law, that the least Variation in their Proceedings from the Powers and Authorities contained in their Commissions would render them wholly ineffectual and void, a Difficulty arose, upon perusing the Articles of Agreement, there being no Spot appointed therein for the Centre to the said Circle, which, should the Commissioners take upon them to determine, would cause such a material Alteration, to the Advantage of one or other of the Proprietaries, as they were not impowered to make: Hereupon, for the further and better Consideration of the affair, the Commissioners mutually agreed to adjourn to the 1st Day of February then next ensuing.

The following Commissioners (viz.) his Excellency Samuel Ogle, Charles Calvert, Matthew Tylghman Ward, Michael Howard, Benjamin Tasker and Edmund Jennings Esqs; appointed, on the behalf of Maryland, by the Right Honourable the Lord

Baltimore, and the following Commissioners (viz.) Isaac Norris, Samuel Preston, Andrew Hamilton, James Steele and Robert Charles Esqs; appointed, on the Part of Pensilvania, by the Honourable the Proprietaries of that Province, being met, at the Town of Newcastle, the 1st Day of February 1732, pursuant to an adjournment made by a sufficient Quorum of the Commissioners at the said Town of Newcastle the 30th Day of October 1732, to proceed in the running, &c., the Circle and Lines agreed by the Articles to be run, his Excellency Samuel Ogle Esq; acquainted the Commissioners of Pensilvania that, notwithstanding the Rigour of the Season, and Extremity of the Weather (the like not known these many Years) and the Distance of 100 Miles, and the Difficulty of passing the Bay of Chesopeak and the Rivers, they, on the Part of Maryland, to shew their Readiness for the Execution of the Agreement, had surmounted all Obstacles of their Journey, in order to meet them on that Day and Place appointed; and further, that the Lord Baltimore, who, then in Maryland, desiring that there might not be want of a sufficient Number of his Commissioners for the above Purposes, and considering the ill State of Health of Richard Bennet Esq; one of his Commissioners, formerly appointed, and the disappointments which might happen to the others, in their intended Journey to Newcastle, had appointed Edmund Jennings to be his commissioner, in the place and stead of Richard Bennet. Then, his Excellency observing that the Commissioners, on the part of Pensilvania, might probably be fatigued with their Journey of about 40 miles from Philadelphia, proposed, if they thought fit, for their conveniency to adjourn until the next day, which was readily consented to, and, thereupon, they adjourned to Friday the 2d Day of February at ten of the Clock in the Forenoon, in the Assembly Room, in the Court-House, which place the Commissioners of Pensilvania desired might be the place of meeting.

At which time the Commissioners, above named being met, his Excellency thought proper to produce the Commission from the Lord Baltimore appointing Edmund Jennings one of his Commissioners, which, being perused by some of the Commissioners on the Part of Pensilvania, was returned to the said Edmund Jennings, his Excellency then desiring to see the Commission from the Proprietaries of Pensilvania, appointing their Commissioners, a Copy was produced, which differed from the Manner of Appointment mentioned in the Minutes taken at Newtown; for that, by those Minutes, James Logan seems to be made a Person always necessary to attend, and therefore his Excellency desired the Original might be produced, which was promised: His Excellency acquainted the Commissioners on the

Part of Pensilvania to this effect (viz.) That the Necessity of strictly conforming themselves to the Powers and Authority contained in their Commission, and that the least Variation therefrom would render their Proceedings ineffectual and void, being delivered at their last Meeting for settled Law, and consequently, a Rule to their Behaviour, by the Commissioners on the Part of Pensilvania, when they the Commissioners had proceeded so far as to come to the Consideration of the Place where the Centre of the Compass or Circle about Newcastle should be fixed, it was found that no particular Spot, Place or indivisible Point, was appointed, either by the Articles of Agreement, or Commission; and, it being certain, that the Difference of Place for such Centre, in the several Parts of the Town of Newcastle (which was large) and would make a great Alteration in the Favour, or Disfavour, of one or other of the Proprietaries, they thought themselves, by the above Doctrine, not at liberty either to exceed their Powers, by placing a Centre in what Part of the Town of Newcastle they pleased, since no Power was given to them for that purpose, and that, by fixing such Centre, they must, necessarily, vary from their Powers, in a Matter very material and essential, for the Interest, or Disadvantage, of one or other of their Principals; That these Reasons put them, the Commissioners of Maryland, under a Necessity of desiring some Satisfaction, of them the Commissioners of Pensilvania, before they made any further Steps, which they, the Commissioners of Pensilvania, having not given, in the Apprehensions of the Commissioners of Maryland, at their last Meeting, the Commissioners of Maryland hoped that, in this Distance of Time, the Commissioners of Pensilvania had so well considered that Point as to remove the Impediment. The Commissioners of Pensilvania answer that they thought the Reason of the last adjournment to be, that the Commissioners of Maryland might receive further authorities or directions from the Lord Baltimore, who was then shortly expected in Maryland: That the Nomination of a Centre was not necessary for the running the Circle, and that only a Segment of the Circle was necessary to be run: That they were informed and advised, by Mathematicians, that a Circle might be run, without fixing a Centre; and that, therefore, this Circle, or a Segment thereof, may be run, without a Centre, as directed by the second Article, which only directs a Circle, or so much as is necessary to be run, without taking notice of a Centre: That tho' the Point or Spot in the Map was not exact, so as to fix a positive Centre, yet, it was directory: That the Rule, of not varying from their Power, was right and true, but that they thought this fixing a Centre was no Variation

from their Powers, since no Centre was mentioned or specified to be in any particular Place; and that they had all the Power of fixing a Centre which either the King, Duke of York, Lord Baltimore, or Mr. Penn, ever had. To this, the Commissioners of Maryland replied, that they could not conceive how this Circle, or a Segment thereof, could be run, without a Centre in some Part of the Town of Newcastle, which was large, and capable of many Centres, to the Advantage, or Disadvantage, of one or other of the Proprietaries; That it was true the second Article does not mention a Centre, and therefore, the Doubt was raised, since no Power was given to fix a Centre: That they were glad to find the Commissioners then receded from the Map, or Spot in the Map, which, at their former Meeting, had been urged as a Point for the Centre of the Circle, which the Commissioners of Maryland then conceived, and still imagine, impossible to apply to any Spot or Place in the Town of Newcastle, with any Probability of Truth: That they thought assuming a Power, not given by the Articles and Commission, as unwarrantable and fatal to their Proceedings, as what the Commissioners of Pensilvania called varying from their Powers; That even, supposing for Argument's sake, that the Duke of York, Lord Baltimore, or Mess. Penns, had sufficient Power to fix a Centre, yet the Commissioners of Maryland did not apprehend such Powers had been transferred to them the Commissioners; That the Lord Baltimore, or Mess. Penns, could not give any Power or Directions, further than, or contrary to, the Commissions and Articles; and, therefore, there was no Necessity of the last Adjournment for that purpose; that altho' the Commissioners of Pensilvania had not given any satisfactory Answer to the Doubt, relating to the Centre, yet, to convince them that the Commissioners of Maryland had no other than an Intention to execute the Agreement, the Commissioners of Maryland were willing, for the present, to postpone a further Consideration of the Centre, and to proceed to the Nature of the Circle, that there might be as few Obstacles as possible to the Agreement; To which the Commissioners of Pensilvania consenting, the second Article was read, and his Excellency delivered the Sense of the Commissioners of Maryland, to the Effect following, (viz.) That the Commissioners, on both Sides, having, at their last Meeting, agreed to have the Deed of Feoffment for Newcastle produced, for their Direction in running out the Circle about the same, and that Deed having been produced accordingly, and a Copy of the same taken, so far as was judged necessary for that purpose, nothing, remained for the Commissioners to do then, but, to run out the Circle according to that Direction: That the Words in the Feoffment are, "All that

"the Town of Newcastle, otherwise called Delaware, and all that Tract of Land, lying within the Compass or Circle of 10 Miles about the same:" That these Words plainly intend a Circumference, or circular Bound, of 12 Miles, about, according to the vulgar and most common Use of the Word Circle; which Signification is, here, particularly determined, by this additional Term, Compass of 12 Miles about, and indeed, nothing can be more common than to call the Compass, or Bounds about, the Circle, instead of the Circumference. Thus a Ring or a Hoop, abstracted from the Area contained within, is called a Circle, and even Mathematicians often use Circle, and Circumference, as synonymous Terms: as when, from a Point given, they propose to describe a Circle; as also when, they say two Circles, can only intersect each other in two Points, they mean two Circumferences, and not two Circles, in which last Case the Proposition would be false: That thus, the usual acceptation of the Word Circle, both with the Vulgar and Mathematicians, is to denote a Ring, or a Hoop, or Circumference. To which Sense the very Words of the Feoffment strictly confine it, by the Term Compass, with the additional expletive Participle, about. That yet, to shew more clearly how impossible it is to put that Construction upon the Words of the Feoffment which the Commissioners of Pensilvania insist upon, it may be supposed, for Argument's sake (tho' the Tract is otherwise) that a Circle, or Compass of 12 Miles about, has the same Signification with a 12 Miles Circle, which last Phrase is liked much better by the Gentlemen of Pensilvania than the other, as thought more for their Advantage, yet, even in that Case, it would only denote a Circle whose Diameter is 12 Miles; for Circumferences, Circles and Spheres, are always denominated and proportioned by their Diameters, Squares of their Diameters, and Cubes of their Diameters; but, never, by their Radii, unless such particular Signification is specified: That a four foot Wheel is understood, by all Mankind, to mean a Wheel, which has four Feet for its Diameter: If the Commissioners for Pensilvania know any four-foot Circle, whatsoever, that has a Diameter of eight Feet, the Commissioners for Maryland hope they would do them the Favour to produce it for their Satisfaction, otherwise, they cannot allow them that, a twelve Mile Circle about Newcastle must mean a Circle where Diameter (by a new Way of Reckoning hitherto unheard of) is 24 Miles, even tho' the Commissioners for Maryland should be so very complying as to allow a Circle or Compass of 12 Miles about to mean the same thing with a 12 Miles Circle. That the Commissioners for Pensilvania may well allow the Commissioners for Maryland to call this Meaning of the Commissioners for Pensilvania a new Way

of denominating and proportioning Circles, since Mr. Penn, as well as the Lords of the Council in 1685, seem wholly unacquainted with it, which could not well have happened if it had been then invented; Those Lords, however willing they were to give the full Extents to that Circle in favour of the King, never thought of its having a Radius of 12 Miles from Newcastle, quite cross the Peninsula to the Bay of Chesapeake, but contented themselves (and it appears that Mr. Penn was likewise greatly contented) with an Order to the following Effect (viz.) That, for avoiding further Differences, the Tract of Land, lying between the River and Bay of Delaware and the Eastern Sea on the one Side, and Chesapeake Bay on the other Side, be divided into equal Parts, by a Line from the Latitude of Cape Hinlopen to the 40th Degree of Northern Latitude, and that one Half thereof, lying towards the Bay of Delaware and the Eastern Sea, be adjudged to belong to his Majesty, and that the other Half remain to the Lord Baltimore, as comprized within his Charter: That no body ever thought this Order of Council had the least Degree of Partiality in favour of Lord Baltimore; on the contrary, it is well known how much he thought himself aggrieved by it, and how desirous Mr. Penn was to rely upon it, avoiding, by all manner of ways, to have his Cause heard by any other Council; and it is to be presumed the present Mess. Penns, likewise, know their Interest too well to desire the Affair to come into Council, even at this time, when the most fair and equitable Decision might be so justly expected that it can be no Objection that at the End of the Article which directs the running out of the Circle mentioned in the Deed of Feoffment, it is added at 12 Miles Distance from Newcastle; for the Intention of both Proprietaries being plainly, without any Manner of Doubt, to run out the above mentioned Circle and no other, besides the very Article it self obliging both Parties to do the same, those Words cannot, possibly, have any Operation, unless they should set the Articles wholly aside for their flat Contradiction to the other Part of the Article and the whole Tenor of the Agreement; that this being the true State of the Case, the Commissioners for Maryland desired to have a plain, and direct, Answer, from the Commissioners for Pensilvania, whether they will run out the Circle about Newcastle as directed by the Deed of Feoffment, or, if they positively insist to run out no other but one with a Diameter of 24 Miles? To this, the Commissioners of Pensilvania answered, That the Commissioners were not left to their Discretions in the Execution of this Article, with regard to the Nature of the Circle, for they were obliged to run it at 12 Miles Distance from Newcastle, and could not run any other:

That the Circle ought to be understood by the Commissioners in the Sense the King by his Deed to the Duke of York, and Charter of Pensilvania, and the Duke of York by his Deed to Mr. Penn and Mess. Penns, and the Lord Baltimore, understood it, and that they understood as a Circle with a 12 Miles Radius from the Town of Newcastle: To which the Commissioners of Maryland replied that, by the Tenor and Purport of the Agreement, it appeared, that the Lord Baltimore and Mess. Penns did not intend any Circle to be run, different from that mentioned and described in the Deed of Feoffment, and that, if any Words were inserted in the second Article, which contradicted the Description of the Circle in the Deed of Feoffment, such Words must either be rejected, or create a Contradiction which would destroy the whole Article; That the Intention of the Parties would not reconcile Contradictions, or make a Circle of four Miles or twelve Miles Diameter, by any Expressions, a Circle of twenty-four Miles Diameter, or twelve Miles Radius; That as the Parties did intend only the Circle in the Deed of Feoffment they the Commissioners of Maryland were ready and willing to determine it to be such a Circle, and proceed accordingly; And that the Charter of Pensilvania could not be said to explain the Circle in the Deed of Feoffment, since such Charter was made before that Deed, and no Relation or Reference had to the Charter, by that Deed, which might rather prove they were two distinct Circles, than the same: And the Commissioners of Maryland further offered, to the Commissioners of Pensilvania, that, as this Point was a Matter properly within the Learning of Mathematicians, in order by any means to satisfy each other, and remove all Doubts, to consult and hear what the Mathematicians thought in relation to such Circle and that the Mathematicians should deliver their Opinions, in the Presence of each other, before the Commissioners, and argue thereupon, at Five of the Clock in the Afternoon; To which Time and Place aforesaid the Commissioners adjourned. At which time, Commissioners being met, the Commissioners for Pensilvania acquainted the Commissioners for Maryland that one of their principal Mathematicians, with whom they intended to consult, was so ill of the Gout as he could not, that Afternoon, attend, and desired the Matter, and Question thereupon, might be reduced into Writing, and that, if he could not attend the next Day, yet, the Commissioners for Pensilvania would procure his Answer in Writing; the Commissioners of Maryland, that no Time might be lost in forwarding the Execution of the Agreement, offered to the Commissioners of Pensilvania to go with them, that Afternoon, to the Place where their Mathematician was, and to carry their own Mathe-

maticians to the same Place; which the Commissioners of Pensylvania (for Reasons only known to themselves) refused.

Whereupon the Commissioners of Maryland delivered, to the Commissioners of Pensylvania, a Writing, to the Effect following, viz.

[This is left blank in the Copy sent this Defendant.]

After which, both the Commissioners agreed to adjourn until 10 O'Clock on Saturday morning, being the 3d Day of February, 1732, at the same Place.

Feb 3.

According to which Adjournment the Commissioners for Maryland attended, at the Place aforesaid where they being, and no Commissioners on the Part of Pensylvania coming, the Commissioners for Maryland ordered an Officer (as they believed) belonging to the Court-House, and there then waiting, to go and acquaint the Commissioners of Pensylvania, that they the Commissioners of Maryland were there, ready to proceed on Business, and expected the Commissioners of Pensylvania would immediately come and join with them, and that it was long after the Hour appointed, or to that effect; which Officer, as the Commissioners for Maryland have good Reason to believe, immediately went and informed the Commissioners for Pensylvania accordingly; That, some time after that Message, Messieurs Norris and Preston came, on the Part of Pensylvania, and, some time after them, Mr. Steel, another Commissioner for Pensylvania, came; whereupon his Excellency acquainted the Commissioners for Pensylvania that they, the Commissioners of Maryland, had waited, a considerable Time past the Hour appointed, for the Commissioners of Pensylvania; but that, as there was then a Quorum sufficient to proceed to Business, he desired there might be no further Delay, for that they, the Commissioners of Maryland, had come a great way from home on that Affair, and that the Mathematicians, who had been consulted with by the Commissioners of Maryland, and were then attending the Room, were obliged to return into Maryland (being 30 Miles at least) that Day, especially the Reverend Mr. Hugh Jones, to attend his Cure on the Sunday, being the next Day; and thereupon his Excellency produced a Paper, signed by the said Mr. Hugh Jones, formerly Mathematical Professor in the College of Virginia, and William Rumsey, with the following Contents (viz.)

Quere, What Circle is understood by these Words (viz.) Enfeoff and confirm, unto the said William Penn, his Heirs and Assigns for ever, all that the Town of Newcastle, otherwise called Delaware, and all that Tract of Land, lying within the Compass or Circle, of 12 Miles about the same.—Answer.—

By the Term, Circle, is understood either a Circumference, or else, an Area; and, as the Word is here expressed, it is limited to a Circumference or Periphery, here called Compass about; the Diameter of which Circle, or Compass about, is somewhat less than Four Miles.

Which Paper some of the Commissioners for Pensilvania read, but, immediately, Mr. Steele went away out of the Room, so that there was not a Number of Commissioners on the Behalf of Pensilvania, sufficient to authorise an Proceedings. The Commissioners of Maryland waited, some time, for the Return of Mr. Steele, or coming of some other of the Commissioners of Pensilvania, there being then, in the Town of Newcastle, Mr. Norris, Preston, Hamilton, Steele and Charles; but none other coming to make a sufficient Number on the Part of Pensilvania, his Excellency informed Mr. Norris, that it was strange the Commissioners for Pensilvania did not meet, to proceed according to the Adjournment; and that, if they delayed coming any longer, the Commissioners of Maryland should think themselves obliged to leave the Place, and protest against the Non-Attendance of the Commissioners of Pensilvania: Mr. Norris acquainted the Commissioners of Maryland, that Mr. Hamilton was so ill, with the Gout, that it was unlikely he could be able to attend: To this his Excellency offered to go down to Mr. Hamilton, if the Commissioners for Pensilvania desired; which not being done, the Commissioners for Maryland waited some time longer, with their Mathematicians, in the above mentioned place appointed, in hopes of the coming of some other of the Pensilvania Commissioners; but none coming, nor any Message brought to the Commissioners of Maryland of their coming, his Excellency again repeated to Mr. Norris the Necessity the Commissioners of Maryland should think themselves under of leaving the Place, and protesting against the Non-Attendance of the Commissioners of Pensilvania, if a sufficient Number did not, in a short Time, come. That after the Commissioners of Maryland had stayed some time longer, and that, at least, an Hour had expired since the Commissioners of Maryland gave notice to the Pensilvania Commissioners of their being ready to proceed to Business, and their Expectation and Desires of the Attendance of the Pensilvania Commissioners for that Purpose; and that upon comparing the Watches of Maryland Commissioners with those of the Pensilvania Commissioners, it appeared that it was between — and 35 Minutes past 12, and that, consequently, the Appointment, or Adjournment, for that Morning, was at end: His Excellency, with the other Commissioners of Maryland then present, (viz.) Charles Calvert, Matthew Tyghlman Ward, Benjamin Tasker, Michael

Howard and Edmund Jennings declared that they had been there attending, according to the Adjournment and Appointment aforesaid, to proceed on Business, but that a sufficient Number of Commissioners for Pensilvania had wilfully neglected to be and continue there, according to the Adjournment aforesaid, to proceed according to the Commission and Articles of Agreement: and that, as the Commissioners of Maryland, not only from the aforesaid Behaviour of the Commissioners for Pensilvania, but also from the Declaration at their Meeting in the Afternoon of the former Day by one of the Pensilvania Commissioners, (viz.) That the Affair to be transacted by the Commissioners would not end here, but be carried into England, or to that Effect, were persuaded the Commissioners for Pensilvania had no other Intent than to break off any further Proceedings towards the Execution of the Agreement; for these Reasons, the Commissioners of Maryland protested, in the Place aforesaid, before Mr. Preston (Mr. Norris having, for some time before, left the Room) and Mr. Jones and Rumsey, against the Non-Attendance aforesaid of the Commissioners of Pensilvania, reserving all Benefit and Advantage which might or could accrue to the Lord Baltimore, by Reason of the Default and Non-Attendance aforesaid of the Pensilvania Commissioners; after which the Commissioners departed from the Place appointed, and their Mathematicians went forthwith to Maryland.

Upon the Return of the Maryland Commissioners, and Representation of the Matters aforesaid to the Lord Proprietary of Maryland, his Lordship by Letter dated the — Day of — acquainted the Governor of Pensilvania, one of the Commissioners of Pensilvania, to the Effect following (viz.) that his Arrival in the Province of Maryland afforded him an Opportunity of taking more than ordinary Care that his Commissioners, in Compliance with the Methods proposed between Messieurs Penns and himself, should be very punctual in meeting the Commissioners of Pensilvania at Newcastle the First of that Instant, pursuant to the Adjournment jointly made by the Commissioners on both Sides the 3d of last November; for this purpose he thought fit to nominate a new Commissioner, to supply the Place of an infirm one; and for the same Reason his Commissioners, notwithstanding the unusual Extremity of the present Season, and the Distance of the Place, were so assiduous in the Journeys as for some of them to arrive at Newcastle, many Days, and all of them, before the Day appointed: That this Behaviour, on one Part, might justly challenge the same strict Observance from the Commissioners of Pensilvania, and he should still have depended on their unwillingness of being guilty of any Infraction if, on the sudden Re-

turn of his Commissioners, he had not been informed that the Commissioners of Pensilvania so little observed the Adjournment made by the Commissioners on both Sides, of their Meeting at Ten o'Clock on Saturday the 3d Instant in the Morning, pursuant to their accustomed way of Proceeding, as that not only one of them left the Place of Meeting, abruptly, at the very Instant his Commisisoners desired to proceed on Business, whereby there was not a sufficient Number present: But also, that the others (though sent for, and repeated Declarations made by his Commissioners of breaking up the Meeting for their Non-Attendance) seemed wilfully, and obstinately, to neglect attending that Mörning, which ended the Appointment made by the joint Commissioners on Friday the 2d Instant in the Afternoon: that he forbore to mention many other Circumstances, reported to him by his Commissioners, and which too plainly shewed a Design in the Commissioners of Pensilvania to violate the Measures entered into in that particular: that, was he inclinable to make a strict Use of this failure, nay voluntary one, on the Side of the Pensilvania Commissioners, he might not only disregard any further Notice, but intitle himself immediately to the Forfeiture incurred by the Failure of the Commissioners of Pensilvania; but he thought himself not a little fortunate by his being in his Province at that Juncture, that he might have an Opportunity of doing, in that Affair, what his Commissioners, perhaps, could not reconcile to themselves the Liberty of, which was to recede, in some measure, from the Advantage he might claim from the Proceedings of the Commissioners of Pensilvania: Upon this Account he was willing, and did then offer, and had accordingly given Directions to his Commissioners, that they should meet the Commissioners of Pensilvania, on the First Monday in May then next, at the Town of Joppa, in Baltimore County, in the Province of Maryland; but, with this Salvo, of all the Right, Benefit and Advantage, he might claim from the Non-Attendance or Failure of the Pensilvania Commissioners on the 3d Instant in the Morning, according to the then last Adjournment: That he thought himself obliged to name the Place at Joppa, not only because Commissioners had attended, twice, at Newcastle, but also, by Reason of a Behaviour of the Pensilvania Commissioners, to some of his at Newcastle, which, possibly, without having the Command over the Inhabitants, would never have been attempted; and, to prevent any Apprehension of the like Conduct from his Commissioners, he assured him he should give a strict Charge to the contrary.

1733, *Mar.* 28.

After which, the Commissioners of Pensilvania sent to the

Commissioners of Maryland the following Letter (viz.) Gentlemen, Five of us, the under-written Commissioners, appointed by virtue of a Commission from the Honourable the Proprietaries of Pensilvania, for executing certain Articles of Agreement concluded between them and the Right Honourable Charles Lord Baltimore, Proprietor of the Province of Maryland, touching the Limits of the said Provinces and Counties of Newcastle, Kent and Sussex, on Delaware, having met the like Number of you, the Commissioners appointed by the said Lord Baltimore, at Newcastle, on the 1st Day of February last, pursuant to our former joint Adjournment, and continued together till the 3d Day of the same Month, when, from a pretended Failure, by reason of a Quorum of us not appearing at the precise Hour in the Forenoon of that Day to which we stood adjourned, you thought fit to withdraw yourselves from the Court-House of the said Town of Newcastle, the Place of our Meeting; and, notwithstanding you and we met together, several times afterwards, in the same Day, yet, insisting upon that supposed Failure, you refused, as Commissioners, to join with us in the Execution of our respective Commissioners, by which Refusal we were obliged to serve you with notice to meet us the same Evening at Six o'Clock, at the Court-House of Newcastle aforesaid, which you neglecting to do, we, the same Evening, served a Quorum of you, access being desired us to others of your Number, with notice to meet us, at the Place aforesaid, on Monday the 5th Day of the said Month; which, likewise, you thought fit so little to regard, that, leaving Newcastle the Day before, you, again, neglected to meet us at the Time and Place by the said Notices appointed; but we, the underwritten Commissioners, notwithstanding the Disregard shewn to our former Notices, being still willing to proceed on the Business which now lies before the Commissioners jointly (viz.) the Execution of the second Article of the said Agreement, which follow in these Words, that there shall be the said Circle, mentioned in the said Charter for Pensilvania, and Deed of Bargain and Sale or Feoffment of Newcastle (or so much thereof as is requisite) drawn and marked out at the 12 Miles Distance from the Town of Newcastle (which 12 Miles shall be 12 English Statute Miles) do hereby give you, and each of you, notice, that we, or a sufficient Quorum of us will attend, at the said Town of Newcastle, on Delaware, which, by the joint Consent of the Commissioners on both Sides, hath been acknowledged to be the only Place proper for Beginning the Business immediately before us, on the 16th Day of April next ensuing,

there to meet and join with you agreeable to the Directions of our respective Commissions, in proceeding to draw and mark out the said Circle accordingly: Given under our Hands, at Philadelphia, the 28th Day of March 1733.

By the Return of the Messenger, who brought the above Letter, Maryland Commissioners sent to the Pensilvania Commissioners the following Notice (*viz.*)

April 3.

Gentlemen, we the under written Commissioners, appointed by virtue of a Commission from the Right Honourable the Lord Proprietary of Maryland, for executing certain Articles of Agreement between his Lordship and the Proprietaries of Pensilvania, met Five of you the Commissioners, appointed by the said Proprietaries of Pensilvania, at Newcastle, on the 1st Day of February last, pursuant to a former joint Adjournment of the Commissioners on both Sides, and continued together till the 3d Day of the same Month; when, contrary to that Readiness and Dispatch which might reasonably be expected from the Commissioners of Pensilvania, you the said Five Commissioners, then in the Town of Newcastle, not only neglected, but even, after repeated Instances made by us to two of you to procure a Number or Quorum of you the Commissioners sufficient to proceed in the Matter then before us, persevered in not meeting us according to the aforesaid Adjournment, in order to proceed to Business, although we were in the Room of the Court House until almost One of the Clock, which was between two or three Hours after the Hour appointed; this Failure, which seemed to be designedly made, justly gave us reason to be assured his Lordship the Lord Proprietary of Maryland might claim the Forfeiture: Upon Report to his Lordship of our Transaction, and Behaviour of the Pensilvania Commissioners towards us, although his Lordship was well satisfied with his Right to the Forfeiture, yet, to give you, Gentlemen, once more, an Opportunity of complying with the Execution of the Agreement, his Lordship was pleased (under a Reservation of his Benefit to the Penalty) to offer, by a Letter dated February the 15th, to his Honour the Governor of Pensilvania, a Meeting between his Commissioners and you, Gentlemen, Commissioners of Pensilvania, to be had, on the First Monday of May next, at the Town of Joppa, in Baltimore County, which we have Direction from his Lordship still to observe, and we, or a Quorum of us, shall punctually attend at that Time and Place. We presume his Lordship had good Reasons for the Appointment of that Place, besides that which we now observe of no necessity of meeting at Newcastle, rather than any other Place, before the Differences in our Opinions and Judgments were adjusted.

Given under our Hands at Annapolis, this 3d Day of April 1733.
1733. *May 7.*

On Monday the 7th Day of May 1733 the following Commissioners, on the Behalf of the Lord Proprietary of Maryland (viz.) the Honourable Samuel Ogle, Esq; Benjamin Tasker and Edmund Jennings, Esqs; pursuant to their Appointment, met at the Town of Joppa, in Baltimore County, in the Province of Maryland, the following Commissioners, on the Behalf of the Proprietaries of Pensilvania (viz.) Isaac Norris, Andrew Hamilton, Samuel Preston, Robert Charles and James Steele, Esqs:

At which Meeting the Commissioners of Maryland observed, that a Gentleman, who was not appointed a Commissioner, was present; but the Commissioners of Pensilvania informing the Commissioners of Maryland that that Gentleman was a Pen-vanian, the Commissioners of Maryland thought it reasonable that another Gentleman of Maryland might also be present; which being agreed to by the Commissioners of Pensilvania, Mr. John Beal, of the City of Annapolis, was called in, who, together with the Pensilvania Gentleman, named Jeremiah Langhorn, were present at the Debates of the aforesaid Commissioners at that Meeting.

Then the Commissioners of Maryland proceeded to take notice of the last Default of the Commissioners of Pensilvania attending at the Town of Newcastle on the Day of February 1732, pursuant to the joint Adjournment: which the Commissioners of Pensilvania endeavoured to excuse. The Commissioners of Maryland then mentioned the Difference and Doubts, which had arose, in the Judgments of the Commissioners on both sides, relating to the Intention of the Proprietaries, and Interpretation of the second Article, and desired to know if they, the Commissioners of Pensilvania, had informed themselves with any Arguments, or provided any Opinions of Mathematicians, to satisfy the Commissioners of Maryland they had put a wrong Interpretation on that Article? To which the Commissioners of Pensilvania answered, they had no Occasion for any Opinion of Mathematicians, but they were to proceed, as they were directed by the Words of the Article; The Commissioners of Maryland urged, that the Article principally regarded the Circle mentioned in the Deed of Feoffment, and that the Words order that Circle to be run out; that another part of the Article directs the Circle to be run out to be at 12 miles Distance from Newcastle; and, therefore, the Commissioners of Maryland conceived, and so informed the Commissioners of Pensilvania, that, if the Circle in the Deed of Feoffment should prove a Circle of different Dimensions or Diameter than those of a Circle drawn at 12 Miles Distance from

Newcastle, one of these Consequences must follow; either that the Part of the second Article which directs the Circle in the Deed of Feoffment to be run must be rejected, or, that the Part of that second Article which directs the Circle of 12 Miles Distance from Newcastle must be rejected, or, that the whole Article must be set aside, as not capable of being executed by reason of the Contradiction: The Maryland Commissioners further represented to the Commissioners of Pensilvania, that it was not reasonable to reject the Words which directs the Circle mentioned in the Deed of Feoffment to be run, because that Deed was the only Foundation (if any) of Mess. Penns Right to Newcastle, and consequently, the principal intention of the Proprietaries in the Agreement was confined to that Circle or Right, and not to any other whatever. To this the Commissioners of Pensilvania answered, that they thought the Direction of a Circle of 12 Miles Distance from Newcastle obliged them to run that Circle, and no other, and that the Proprietaries so understood it.

Therefore the Maryland Commissioners, in order to know certainly whether the Pensilvania Commissioners would agree to any reasonable and feasible Construction of the second Article, and by that Means enable the Commissioners to proceed to an Execution, proposed the following Question (*viz.*) Whether the Commissioners on the Part of Pensilvania will run out any other Circle about the Town of Newcastle, than a Circle of 12 Miles Distance from the Town of Newcastle?

To which the Commissioners of Pensilvania returned, in Writing, the following Answer (*viz.*) By the Articles of Agreement, between the Proprietaries of Pensilvania and Counties of Newcastle, Kent and Sussex, on Delaware, on the one part, and the Lord Baltimore, Proprietary of Maryland, on the other Part, it is enjoined that there shall be the said Circle mentioned in the Charter of Pensilvania and Deed of Bargain and Sale, or Feoffment, of Newcastle (for so much thereof as is requisite) drawn and marked out at the 12 Miles Distance from the town of Newcastle, which 12 Miles shall be 12 English Statute Miles: Therefore, in Answer to the above Question, we, the Commissioners of Pensilvania, do say, that we are ready, and offer ourselves, to run out the said Circle, mentioned in the said Charter of Pensilvania and Deed of Bargain and Sale, or Feoffment, of the Town of Newcastle, at the Distance of 12 Miles from the said Town of Newcastle, according to the said Articles of Agreement, and we do not conceive we are directed to run any other Circle than the said Circle mentioned in the Articles aforesaid.

This Answer the Maryland Commissioners looked upon as evasive, and designed to avoid any Agreement with the Commis-

sioners of Maryland, since the Commissioners of Maryland, by that Answer, were not capable of judging what sort of a Circle the Commissioners of Pensilvania would have run about Newcastle, in case any Difference should be between the Circle in the Deed of Feoffment, and the Circle of 12 Miles from Newcastle.

After which the Commissioners of Pensilvania proposed to the Commissioners of Maryland the following Question (viz.) By the Articles of Agreement made and concluded between the Proprietaries of Pensilvania and the Counties of Newcastle, Kent and Sussex, on Delaware, on the one Part, and the Lord Proprietary of Maryland on the other Part, it is agreed that there shall be the said Circle, mentioned in the Charter for Pensilvania and Deed of Bargain and Sale, or Feoffment, of Newcastle, or so much thereof as is requisite, drawn and marked out at the Distance of 12 Miles from the Town of Newcastle, which 12 Miles shall be 12 English Statute Miles: Whereupon we, the Commissioners of Pensilvania, do require you, the Commissioners of Maryland, as we have long and frequently done, to join with us in drawing and marking out the said Circle, at the Distance of 12 Miles from the Town of Newcastle as by the said Articles is agreed and directed, and then to proceed to the running, marking and laying out the other Lines in the said Articles directed and agreed to be run, marked and laid out, as in that Agreement is directed to be done, and, if you refuse to do, we desire you will satisfy us why you will not?

To which the Commissioners of Maryland returned, in Writing, the following Answer (viz.) In Answer to the above Question, We, the Commissioners of Maryland, say, that the principal Intentions and Directions of the Proprietaries in the second Article appear, by the whole Tenor of the Agreement, and Commission to us directed, to be, that no other Circle than the Circle mentioned, described in the Deed of Bargain and Sale, or Feoffment, of Newcastle, or so much thereof as is requisite, shall be drawn and marked out. This Circle, so mentioned and described in the said Deed of Bargain and Sale, or Feoffment, we, the said Commissioners of Maryland, have never refused to draw and mark out, but do desire you, the Commissioners of Pensilvania, to agree with us in drawing out the said Circle, so mentioned and described, or so much thereof as is requisite: And we, the aforesaid Commissioners of Maryland, further say, that we are ready, and willing to proceed to Cape Hinlopen, in Order to draw a due East and West Line a-cross the Peninsula, as directed by the third Article.

After which, the Commissioners of Maryland delivered, to the Commissioners of Pensilvania, a Proposal in the following

Words, (viz.) We the Commissioners of Maryland, offer and propose, to the Commissioners of Pensilvania, to run out a Circle whose Circumference is 12 Miles about Newcastle, for that the Commissioners of Maryland are informed, and convinced, by the Mathematicians (with whom they have advised) that the Circle described and mentioned in the Deeds of Bargain and Sale, or Feoffment, about Newcastle, can denote or mean no other than such a Circle whose Circumference is 12 Miles, and the Commissioners of Maryland further offer, to the Commissioners of Pensilvania, to hear any Arguments, or receive any Information, from other Mathematicians, in case the Commissioners of Pensilvania differ from the Commissioners of Maryland in Judgment about the said Circle.

To which the Commissioners of Pensilvania returned the following Answer, (viz.) In Answer to the above Proposition We, the Commissioners of Pensilvania, do say, that the Duty required of the Commissioners of either Side is to run, mark and lay out the said Part of a Circle, and the said Lines, pursuant to the Articles of Agreement, and when so run and marked, to return such a Plan and Survey as by the said Articles is directed, and that we are fully convinced a Circle, whose Circumference is only 12 Miles about the Town of Newcastle, is not the Circle we are directed to run by the said Articles, and we are also fully satisfied that the Circle mentioned in the Charter for Pensilvania and Deed of Bargain and Sale, or Feoffment of Newcastle, directed to be run by the Articles aforesaid, is a Circle whose Radius is 12 Miles, and this is so plainly expressed by the Proprietaries, on both Sides, in the said Articles, to be a Circle to be drawn at the Distance of 12 Miles from the said Town of Newcastle, that we, the Commissioners of Pensilvania, do conceive ourselves Warranted by the said Articles so run such a Circle only, which we are now ready and willing to do; And we further conceive that, as we have no need, so we have no Authority, to refer the Construction of the Circle, mentioned in the said Charter, Deed of Feoffment, and Articles of Agreement, to any Persons whatsoever.

May 9.

Then the Commissioners, on both Sides, entered into this following Agreement, (viz.) Joppa, May the 9th 1733. This Day it is agreed, by the Commissioners on both Sides, that they, or a Quorum of each, shall meet, at the House of Isaac Norris jun., in Philadelphia, the 21st Day of this Instant May, with this Proviso that, if the Commissioners on the Part of Maryland cannot with Conveniency, return from Burlington, so as to meet on that Day, then and in such Case, the Commissioners of Pensilvania agree that, upon Notice given them, by

the Commissioner of Maryland, of a Day to meet, at the Place aforesaid, before their return to Maryland, the Commissioners on the Part of Pensilvania, or a Quorum of them, will meet those of Maryland, or a Quorum of them, at the Place aforesaid, on the Day that shall be so appointed. And it is further agreed that, if it shall so happen that, after the Meeting and Stay of the Commissioners of Maryland in Philadelphia, with the Commissioners of Pensilvania, or a Quorum of them, will meet those of Maryland, or a Quorum of them, at the Place aforesaid, on the Day that shall be so appointed; And it is further agreed that, if it shall so happen that, after the Meeting and Stay of the Commissioners of Maryland in Philadelphia with the Commissioners of Pensilvania one Day, they cannot readily agree upon an Adjournment, that then, the Commissioners of Maryland shall not be longer detained from returning to their respective Homes, they accepting of a Notice in Writing, to be delivered to any one of their Commissioners, to meet those of Pensilvania at the House of Andrew Peterson in the County of Newcastle, on Delaware, the 18th Day of June next ensuing, in order to the running and marking out the Lines according to the Articles of Agreement.

May 25.

The Commissioners of Maryland not returning from Burlington, so as to meet on the 21st Day of May according to the said Agreement, did, on or about the 25th of May, send the following Notice to the Commissioners of Pensilvania, viz.

Gentlemen, We, the Subscribers, Commissioners appointed by the Right Honourable the Lord Proprietary, having not been able, with Conveniency, to return from Burlington, so as to meet you, the Commissioners appointed by the Honourable the Proprietaries of Pensilvania, on the 21st Day of this Instant May, do, pursuant to an Agreement made at Joppa the 9th of this Instant May, hereby give you Notice that We, or a Quorum of Us, will meet you, or a Quorum of you, at the House of Mr. Isaac Norris, jun., in this City of Philadelphia, on To-morrow, being Saturday the 26th Instant May, about 10 o'Clock in the Morning.

At which Time and Place a Quorum of the Commissioners, on both Sides, being met, the following Agreement for a further Adjournment was made, (viz.)

May 26.

A Quorum of the Commissioners, on both Sides, being this 26th Day of May 1733 met, at the House of Isaac Norris, jun., in Philadelphia, upon a Notice from the Commissioners on the Part of Maryland, to those on the Part of Pensilvania, in pursuance of an Agreement made the 9th Day of this Instant at

Joppa in the Province of Maryland, and it being represented, by the Commissioners on the Part of Maryland, that the Lord Baltimore, being in some short time about to depart this Province of Maryland and to return to Great Britain, it will be a great Inconveniency for them to meet in the Month of June, according to the former Agreement, for the Purposes mentioned in their respective Commissions, and it being further considered that the Months of July and August are very hot, and for that Reason render the running of Lines very troublesome and unsafe at this Season of the Year, the Commissioners, on the Part of Pensylvania, on the Considerations aforesaid, do, therefore, agree with those of Maryland to meet, at the Town of Newcastle, on Delaware, on the 3d Day of September next, in order to the running and marking out the Lines according to the Articles of Agreement. Dated at Philadelphia the 26th Day of May 1733.

Sept. 3.

Newcastle, September the 3d 1733. Whereas the Commissioners appointed, as well on the Part of the Proprietors of Pensylvania, as on the Part of the Lord Proprietor of Maryland, for running, marking, laying out the Lines, Limits, and Bounds of the said Provinces, &c., in pursuance of Articles of Agreement mutually concluded between the said Proprietors, having, for the Conveniency of the Gentlemen, Commissioners of Maryland, then attending the Lord Baltimore, met at Philadelphia the 26th of May last, did, then, adjourn to this Instant the 3d of September, at Newcastle, in Order to the running and marking out the Lines according to the Articles aforesaid, and a Quorum of the said Commissioners, on both Parts, being now met at Newcastle, in pursuance of the said Adjournment, the Commissioners on the Part of Pensylvania do now acquaint those of Maryland that they are ready, with their Artists, to proceed immediately to the running and marking out the Circle mentioned in the Charter for Pensylvania, and Deed of Bargain, and Sale, or Feoffment, of Newcastle, at the Distance of 12 Miles from the said Town of Newcastle, as the first thing directed to be done by the Articles aforesaid, concluded between the Proprietaries of the said respective Provinces; and, as a great Part of the Term, appointed for executing the said Articles pursuant to our respective Commissions, is now elapsed, without any Progress made therein, the said Commissioners of Pensylvania do earnestly desire and press the Commissioners of Maryland to join with them in the said Work, that no more time may be lost. Isaac Norris, Sam. Preston, J. Logan, A. Hamilton, James Steele, Robert Charles.

Sept. 4.

Newcastle the 4th of September 1733. Whereas the Commissioners appointed, as well on the Part of the said Lord Proprietary of Maryland, as on the Part of the Proprietors of Pennsylvania, for running, marking, and laying out the Lines, Limits and Bounds of the said Provinces, &c., in pursuance of Articles of Agreement mutually concluded between the said Proprietaries, having, for the mutual and joint Conveniency of both the said Commissioners, met at Philadelphia the 26th Day of May last, did then adjourn to the 3d of this Instant September, at Newcastle, in order to the running and marking out the Lines according to the Articles aforesaid, at which Time and Place, in pursuance of the said Adjournment, a Quorum of the said Commissioners on the Part of Maryland, and a Quorum of the Commissioners on the Part of Pennsylvania, being met, and the Commissioners on the Part of Pennsylvania having then delivered to the Commissioners on the Part of Maryland a Paper, in Writing, signed by the said Commissioners on the Part of Pennsylvania, they the said Commissioners of Maryland, in Answer to the same Paper, do say, that the Commissioners of Maryland have frequently acquainted the Commissioners on the Part of Pennsylvania, and do now repeat the same, that they the said Commissioners on the Part of Maryland do conceive the principal intentions and Directions of the proprietaries in the second Article appear, by the whole Tenor of the Agreement and Commission, to be, that no other Circle than the Circle mentioned and described in the Deed of Bargain and Sale, or Feoffment of Newcastle, or so much thereof as is requisite, should be drawn and marked out, and that they are informed and convinced, by Mathematicians, that such Circle described and mentioned in the said Deeds of Bargain and Sale, or Feoffment about Newcastle, can denote or mean no other than such a Circle whose Circumference or Periphery is 12 Miles, and whose Diameter is somewhat less than four Miles, and which Circle, of the said Dimensions, whose Circumference or Periphery is 12 Miles, the said Commissioners on the Part of Maryland do acquaint the Commissioners on the Part of Pennsylvania that they are ready to proceed to the running and marking out, in any manner the Commissioners on the Part of Maryland think themselves authorized to proceed, if the Commissioners on the Part of Pennsylvania will agree with the Commissioners on the Part of Maryland to run and mark out such Circle whose Circumference or Periphery is 12 Miles; and the Commissioners on the Part of Maryland, by Reason so great part of the time for executing the said Articles is elapsed, do earnestly desire and press the Commissioners of Pennsylvania to agree with them to run the Circle whose Circumference or Periphery is 12 Miles,

in such manner as their Authority directs, that no more time may be lost. The Original, whereof this is a Copy, was received by us, Isaac Norris, Sam. Preston, J. Logan, A. Hamilton James Steele, Robert Charles, M. Howard, M. T. Ward, Edm Jennings, James Harris, J. Ross.

Sept. 4.

Newcastle, September the 4th, 1733. The Commissioners on the Part of Pensilvania having, this Day, received the Answer of those of Maryland, to the Paper delivered by the former, at a Meeting of the Commissioners Yesterday, in which Answer the Commissioners of Maryland do alledge that they have frequently acquainted the Commissioners on the Part of Pensilvania; and do now repeat the same, that they, the Commissioners on the Part of Maryland, do conceive the principal Intentions and Directions of the Proprietaries in the second Article appear, by the whole Tenor of the Agreement and Commission, to be that no other Circle than the Circle mentioned and described in the Deed of Bargain and Sale or Feoffment of Newcastle, or so much thereof as is requisite, should be drawn and marked out, and that they are informed and convinced by Mathematicians that such Circle, described and mentioned in the said Deeds of Bargain and Sale, or Feoffment, about Newcastle, can denote or mean no other than such a Circle whose Circumference or Periphery is 12 Miles, and whose Diameter is somewhat less than four Miles, the Commissioners on the Part of Pensilvania conceive they cannot give a more proper or effectual Answer, than to the said Allegation of the Commissioners of Maryland, of their having frequently acquainted those of Pensilvania with their Sentiments as aforesaid, than by exhibiting a Copy of the Paper or Answer which they had prepared on the 3d of February last, at this Town of Newcastle, and delivered the same into the Hands of Governor Ogle, who then thought not fit to accept of it, a Copy whereof is now again delivered. Now the Commissioners on the Part of Pensilvania are firmly of Opinion that, when the Arguments, advanced in the said Paper are only considered, together with the express Words of our respective Commissions, it will be next to an impossibility to conceive that the principal Intentions and Directions of the Proprietaries in the second Article of the Agreement can be other than a Circle to be drawn at the Distance of 12 Miles from Newcastle; and whereas the Commissioners of Maryland seem to depend on the Opinion of Mathematicians, by whom (they say) they are convinced that the Circle described and mentioned in the Deeds of Feoffment about Newcastle can denote or mean no other than such a Circle whose Circumference or Periphery is 12 Miles, and whose Diameter is somewhat

less than four Miles, the Commissioners of Pensilvania, in the first Place, say that the Circle mentioned in the Letters Patent, Deeds, Articles, and Commissions, is so clearly and fully described and explained that they cannot conceive there can be the least room left to consult Mathematicians thereupon, yet, to give their Sentiments, on the Opinion of some Mathematicians offered them, they say they cannot find, on any Enquiry they are capable of making, that the Matter in Controversy can, by any means, fall under the Cognizance of Mathematicians, as such, for that they had been assured a Circle comes no otherwise under the Notice of a Geometer, or a Mathematician, than as he considers the Property of it, but no Property of a Circle, otherwise than as it is barely a round Figure, is in the present Case to be considered, and therefore, it appears to the said Commissioners entirely out of the way of such Artists to determine anything, or give any Opinion concerning the Circle now under Dispute: It appears indeed that in Euclid's Elements (a Book of such Authority as, it is said, no Mathematician will, or can Dispute) the Definition of a Circle is given in the Sense it is used in Geometry, viz.

That it is a plain Figure, termined or comprehended by one Line which is called the Circumference, to which Circumference all strait Lines drawn from one Point within the same are equal to each other, and that this Point is called the Center, which so very plainly shews the Difference between a Circle and its Circumference, that it appears strange to us, the Commissioners of Maryland would insist upon Reasons so ill grounded, but, from whence, it is plain from (to) the Commissioners of Pensilvania, that the Point in hand is entirely foreign to all Mathematical Enquiries, and it is equally evident, that the Sense of the Words under Dispute is to be taken only from the common Sense of Mankind, who understand the English Tongue, what is intended by the Words, within 12 Miles of a Place, or within the Compass of 12 Miles about a Place, is clearly understood by all Englishmen: Nor does the Addition of the Word, Circle, after the Word, Compass, make any manner of Alteration, for they manifestly mean the same Thing, and the Addition was most proper in this Place, because a Circle, drawn at the Distance of 12 Miles from Newcastle, the same with the Circle granted in the Deed, is made, in Part, the Southern Boundary of the Province of Pensilvania, by the King's Letters Patents, which were prior in Date to the Deed of Feoffment: The Commissioners for Pensilvania further say, that were it possible for them, contrary to plain and common Sense, to be prevailed on to agree in running a Circle of about Four Miles Diameter only, the Commissioners for Maryland cannot but be sensible their Work would be in

itself entirely void, as it would be directly contrary to the express Words and Direction of their Commission, from which, alone, they can derive any Power or Authority to run any Circle at all. Isaac Norris, Sam. Preston, J. Logan, A. Hamilton, J. Steele, Rob. Charles.

A Copy of the Pensilvania Paper tendred 3 Feb. 1732, and now again delivered 4 Sept. 1733.

The Commissioners on the Part of Maryland having made two Objections against running the Circle, or Part of a Circle, about the Town of Newcastle, as directed by the Agreement made between the Proprietors of Pensilvania and Maryland.—First, For that there being no Center, fixed or agreed upon by the said Proprietors, from whence the said Circle shall be drawn, they conceive they have no Power to make a Center, and, therefore, are not warranted by their Commissioners to run the said Circle. Secondly; For that the Deed of Bargain and Sale or Feoffment from the late Duke of York to the late William Penn Esq; the Elder, for the Town of Newcastle, and the Lands about the same, being expressed in these Words, to wit, “All that the “Town of Newcastle, otherwise called Delaware, and all that “Tract of Land, lying within the Compass or Circle of 12 Miles “about the same, situate, lying, and being, upon the River Delaware, in America,” the said Commissioners for Maryland do object that the Circumference, or Periphery, of that Circle is to be but 12 Miles, which, they say, will make a Diameter scarce four Miles, or, at most, it will but make a Diameter of 12 Miles, so that the Radius of the Circle, to be run by the present Agreement about the Town of Newcastle, will be but six Miles at most, and that, the Words in the Article of Agreement and Commissions, which direct that the Circle shall be at the Distance of 12 English Statute Miles from the Town of Newcastle, are either superfluous, or are contradictory to the Description in the Deed of Feoffment, and therefore void in themselves: To which Objection the Commissioners, on the Part of Pensilvania, answer, That they conceive the Commissioners on both Sides be empowered or directed by their Commissions, in pursuance and in Part Performance of the said Articles of Agreement, to draw and mark out the said Circle mentioned in the Charter of Pensilvania and Deed of Bargain and Sale, or Feoffment, of Newcastle, or so much thereof as should be requisite, at 12 Miles Distance from the Town of Newcastle, which 12 Miles shall be 12 English Statute Miles, and to do every thing necessary for the running the same accordingly: and that the Words in the said Deed, as well as the Words in the said Articles of Agreement, and the several Commissions from the respective Proprietors to

the Commissioners, contain such a certainty as will well warrant the Commissioners to proceed in drawing and marking out the said Circle, or so much thereof as shall be thought requisite: As to the second Objection, the Commissioners of Pensylvania are of Opinion, that it is not from the Words of the before-mentioned Deeds only, that the Radius of the said Circle is to be judged of, or measured, but, likewise, from the Charter of Pensylvania, and the Grant of the late Duke of York to William Penn Esq; the Elder, for that Tract of Land upon Delaware River and Bay, now called by the Names of Sussex, Kent, and Part of Newcastle County; and, if any doubt could arise upon the Words of the before Deed of Bargain and Sale for the Town of Newcastle, concerning the Radius of the Circle of 12 Miles about the said Town, we conceive it is fully explained, cleared up, and reduced to a certainty, by the aforesaid Charter and Deeds; for, it is to be observed, that as the Town of Newcastle and the 12 Miles around the same, was originally appropriated, by the said late Duke of York, for certain purposes, before he granted the same to the said William Penn; so King Charles the Second, when he granted the Province of Pensylvania, took care not to encroach upon that Circle, but begins the Bounds of the said Province from 12 Miles Distance Northward of Newcastle Town: Thus, by the King's Grant of the Province of Pensylvania, we see, that he understood the Periphery or Circumference of the Circle about the Town of Newcastle to be 12 Miles distant from the same: It is further observable that, by the Grant of the said late Duke of York to the said late William Penn, the Elder, of that Tract of Land now containing Sussex, Kent, and Part of Newcastle County, the said Duke, who was, at the Time of making the said Grant, Owner of both the said Town of Newcastle, and the 12 Miles round the same, and also of the said Tract of Land lying on the River and Bay of Delaware, understood the Circumference of the said Circle to be at the Distance of 12 Miles from the Town of Newcastle, and accordingly describes the Bounds of the said Tract of Land, as lying on Delaware River and Bay, and Beginning 12 Miles South from the Town of Newcastle, and extending South to Cape Hinlopen, &c. From all which, we conceive it most evident, that the Circumference of the Circle about the Town of Newcastle is 12 Miles distant from the same; so it appears King Charles the Second, who was the original Grantor, understood it when he bounded the Province of Pensylvania at the Distance of 12 Miles North of the Town of Newcastle, and the said late Duke of York, who was Owner of all the Lands to the Southward of Pensylvania as far as Cape Hinlopen, and

had the unquestionable Right to declare the meaning of his own Grant, he has declared how he understood the Extent of that Circle, by beginning his Grant of the Lands lying on Delaware, and to the Southward of the said Town of Newcastle, at 12 Miles distant from the same; but, were it possible, after Consideration had of said Charter and Deeds, for any Person to be in doubt about the Extent of the said Circle, or Part of the Circle, now to be marked out by the Commissioners, we, on the Part of Pensilvania, are clearly of Opinion, that the Proprietors of both Provinces, who are the sole Owners of all the Lands lying between the Bay of Chesopeak and the River Sassquahanah to the Westward, and the Bay and River of Delaware to the Eastward, have, as they had an undoubted Right to do, in most full and express Terms, removed that Doubt, by the second Article of their Agreement; where they say that there shall be the said Circle mentioned in the said Charter for Pensilvania and Deed of Bargain and Sale or Feoffment of Newcastle, or so much thereof as is requisite, drawn and marked out at the 12 Miles Distance from the Town of Newcastle, which 12 Miles shall be 12 English Statute Miles; and as to the Objection that so much of this Article as directs the Circle to be at 12 Miles Distance from the Town of Newcastle is superfluous, or contradictory, to the Deeds of Feoffment aforesaid, and, therefore, void in itself, we do not conceive it deserves any other Answer than to say that the Article is neither superfluous, or contradictory, but a plain Declaration of what has always been understood to be meant by 12 Miles about the Town of Newcastle, and that the Proprietors of Maryland and Pensilvania had undoubtedly a good Right to divide their own Lands in such manner as they thought fit, and they have accordingly agreed, that the Circle about the Town of Newcastle shall be drawn and marked out at the Substance (Distance) of 12 English Statute Miles from the said Town, and the Commissioners on the Part of Pensilvania are now ready, and offer themselves, to proceed to the drawing and marking out the same accordingly. Newcastle, Feb. 3. 1732. A Copy, delivered this 4th Sept. 1733, to the Commissioners of Maryland, by us Isaac Norris, Sam. Preston, J. Logan, A. Hamilton, James Steele, Robert Charles. Isaac Norris, Samuel Preston, A. Hamilton, James Steele, Robert Charles.

Sep. 5.

Newcastle 5th Sept. 1733. The Commissioners on the Part of Maryland, upon considering the Paper dated the 4th of this Instant, and also another Paper therein referred to, and both delivered the same Day to them by the Commissioners of Pensilvania, do return the following Answers: First. That the Reasons, alledged by the Commissioners of Pensilvania, ear

very far from being sufficient to satisfy the Commissioners of Maryland, that the principal Intentions and Directions of the Proprietaries in the second Article appear, by the whole Tenor of the Agreement, to be any otherwise than that no other Circle than the Circle mentioned and described in the Deed of Bargain and Sale, or Feoffment, of Newcastle, or so much thereof as should be requisite, should be drawn and marked out, but, on the contrary, the Commissioners of Maryland conceive, that the Construction on the Intention of the Royal Grantors, and of the Parties (to) the Agreement, as well as to the References to such Grants which the Commissioners of Pensilvania think themselves obliged on this Occasion to use, in order to shew what was intended by such Deed of Feoffment, fully convince the Commissioners of Maryland, that no other Circle than the Circle described and mentioned in the Deed of Bargain and Sale of Feoffment of Newcastle, or so much thereof as may be requisite, can, or ought to be run and marked out by the Commissioners of Pensilvania, as well as by the Commissioners of Maryland. Secondly, The Commissioners of Maryland say, that (without attacking the Authority of Euclid) they cannot but retain the former Opinion they delivered to the Commissioners of Pensilvania, viz. That the Circle, mentioned and described in the said Deed of Bargain and Sale, or Feoffment, can denote or mean no other than such a Circle whose Circumference, or Periphery, is 12 Miles, and whose Diameter is somewhat less than four Miles, and the Commissioners of Maryland cannot but with the Mathematicians, with whom they had advised, had been now in Newcastle, but whose Presence was not thought necessary after the Answer of the Commissioners of Pensilvania of the 8th of May last, to a Proposal of the Commissioners of Maryland of the same Day, for the Commissioners of Maryland think that they could very easily make appear, that the Definition of a Circle in general, as quoted from Euclid, can have little Relation to the Description and Dimensions of the particular Circle mentioned in the Deed of Feoffment. The Commissioners of Maryland further add, that they are not apprized of the Paper, referred to, being offered, or refused by, the Governor of Maryland. Upon the whole, for Reasons often repeated, the Commissioners of Maryland are willing to run and mark out a Circle whose Circumference is 12 Miles, as they have formerly proposed, if the Commissioners of Pennsylvania will agree and consent thereto. M. Howard. M. T. Ward, Edm. Jennings, Ja. Harris, John Ross. The Original, whereof this is a Copy, was delivered to us Isaac Norris, Samuel Preston, J. Logan, A. Hamilton, James Steele, Robert Charles.

Sept. 6.

Newcastle, Sept. 6th, 1733. The Commissioners on the Part

of Pensilvania take leave to observe, that the Commissioners on the Part of Maryland have, at their late Meetings, constantly insisted, that the Circle mentioned in the Deed of Bargain and Sale, or Feoffment, of Newcastle, is only a Circle whose Circumference is 12 Miles, and whose Diameter is somewhat less than 4 Miles, and that they are willing to run such a Circle, but, as the Circle under our Consideration, recited in the second Article of Agreement, is expressly directed to be run at the Distance of 12 English Statute Miles from the Town of Newcastle, the Commissioners of Pensilvania conceive, that the Circle whose Radius is 12 Miles, is the only Circle the Commissioners of either Side are directed to run by their Commissions, from which alone they have any Power or Authority to run any Circle at all, and, therefore, they expect the Commissioners of Maryland will either join with them in running such a Circle, or directly declare they will not. Isaac Norris, Sam. Preston, J. Logan, A. Hamilton, James Steele, Robert Charles.

Newcastle, Sept. 6th, 1733. The Commissioners of Maryland, in Answer to the Paper this Day delivered by the Commissioners of Pensilvania, do say, that as they are fully satisfied and convinced, that no other Circle than the Circle mentioned and described in the Deed of Bargain and Sale, or Feoffment, of Newcastle was intended, by the Articles of Agreement, to be run and marked out, and, as the Commissioners of Maryland are also of Opinion, that such Circle is not a Circle of 12 Miles Radius, or ought to be run at the Distance of 12 English Statute Miles from the Town of Newcastle, the Commissioners of Maryland cannot agree, or join with the Commissioners of Pensilvania, to run and mark out a Circle at the Distance of 12 English Statute Miles from the Town of Newcastle, or whose Radius shall be 12 English Statue Miles. M. Howard, M. T. Ward, Edm. Jennings, Ja. Harris, John Ross. The Original, whereof this is a Copy, was received by the Commissioners of Pensilvania, Isaac Norris, Samuel Preston, J. Logan, A. Hamilton, James Steele, Robert Charles.

Newcastle, Sept. 6th, 1733. The Commissioners on the Part of Maryland desire to know, from the Commissioners of Pensilvania, whether they will not consent and agree with the Commissioners of Maryland to run and mark out any other Circle round the Town of Newcastle, than such whose Radius shall be 12 Miles? M. Howard, M. T. Ward, Edm. Jennings, J. Harris, John Ross. The Original whereof this is a Copy, was received by us the Commissioners of Pensilvania, Isaac Norris, Sam. Preston, J. Logan, A. Hamilton, James Steele, Robert Charles.

Newcastlè, Sept. 6th, 1733. To the Question of the Commissioners of Maryland, proposed to us after the Delivery of our Paper this Forenoon, we Answer, that the Proprietors of the

two Provinces, &c., and Maryland, by the second Article of the Agreement concluded between them, having agreed and directed, that there shall be the Circle mentioned in the Charter for Pensilvania and Deed of Bargain and Sale, or Feoffment, of Newcastle, or so much thereof as is requisite, drawn and marked out, at the 12 Miles Distance from the Town of Newcastle, which 12 Miles shall be 12 English Statute Miles, and by the Commission granted us for executing the said Agreement, the said Circle mentioned in the second Article is that only we are directed and impowered to run, therefore, we cannot agree to run any other than a Circle at the Distance of 12 Miles from Newcastle, as in the said Article is directed. Isaac Norris, Sam. Preston, J. Logan, A. Hamilton, James Steee, Robert Charles.

Newcastle, September the 6th, 1733. The Commissioners of the Proprietaries of Maryand and Pensilvania differing in their Sentiments, about the Dimensions of the Circle directed to be run by the Articles of Agreement now subsisting between the said Proprietaries, as appears by the several Papers exchanged between the Commissioners on both Sides this Day, the Commissioners on the Part of Maryland insisting that the Circle mentioned in the Deed of Bargain and Sale, or Feoffment, of Newcastle, which they say is a Circle whose Circumference or Periphery is 12 Miles, and whose Diameter is somewhat less than four Miles, is the only Circle they can run, and having desired the Commissioners of Pensilvania to join with them in running the same, the said last mentioned Commissioners have refused so to do, as not being the Circle directed in the Articles of Agreement, and the Commissioners on the Part of Pensilvania insisting upon running a Circle at the Distance of 12 Miles from the Town of Newcastle, as they say they are directed by the said Articles of Agreement and their Commission, and having desired the Commissioners of Maryland to join in running such a Circle, they have refused to do the same, and say further that, forasmuch as the Commissioners on the Part of Maryland and Pensilvania cannot agree about the Dimensions of the Circle to be run in pursuance of the said Articles of Agreement, and that they cannot compel the Commissioners of Pensilvania to join with them in running a Circle whose Circumference or Periphery is 12 Miles, and whose Diameter is somewhat less than four Miles, it is to no purpose to continue here, but that we ought to adjourn for further Consideration of the Premises: To which, the Commissioners of Pensilvania say, that they are fully satisfied that the Circle of 12 Miles Distance from the Town of Newcastle, is the only Circle they can agree to run, yet, forasmuch as the Commissioners of Pensilvania cannot compel the Commissioners of Maryland to join with them in

running such a Circle, they must, at present, yield to the Adjournment proposed by the Commissioners of Maryland; which Adjournment is hereby fixed for the 14th of November next; at which time the Commissioners agree that they, or a Quorum of each Side, will then attend, at Newcastle, in Discharge of their respective Trusts. Isaac Norris, Sam. Preston, J. Logan, A. Hamilton, James Steele, Robert Charles.

Nor. 16.

Newcastle, November the 16th 1733. The Commissioners appointed by the Right Honourable the Lord Proprietor of Maryland, and the Commissioners appointed by the Honourable the Proprietors of Pensilvania, for running the Lines, &c., having, pursuant to their Adjournment on the 6th of September last, met, at the Town of Newcastle, of this Instant November, and continued together by several Adjournments to this 16th Instant of the same November, at the said Town of Newcastle, the Commissioners on the Part of Maryland having acquainted the Commissioners on the Part of Pensilvania that they are willing to run the Circle mentioned in the Deed of Bargain and Sale and Deed of Feoffment of Newcastle in the manner they have frequently before offered to the Commissioners of Pensilvania, and the same Commissioners of Pensilvania insisting they can only run a Circle of 12 Miles Radius, by reason whereof the said Commissioners on both Sides not being able to agree in the Dimensions of the Circle so to be run about Newcastle, the Commissioners on the Part of Maryland, in order that they may endeavour to do and execute so much of the said Articles and Commission as may be found practicable by a joint Agreement, propose and offer to the Commissioners of Pensilvania to proceed to Cape Hinlopen, in order to proceed in fixing the Cape, and running the East and West Line directed by the third Article to run from thence. The Original, whereof this is a Copy, was delivered by the Commissioners of Maryland to us the Commissioners of Pensilvania, Isaac Norris, Sam. Preston, J. Logan, A. Hamilton, James Steele.

Nor. 17.

To the Commissioners appointed on the Part of Maryland for running, marking, and laying out the Lines, Limits or Bounds between the Province of Maryland and the Province of Pensilvania and the Counties of Newcastle, Kent and Sussex on Delaware; Gentlemen, In order to answer the Proposals of the 16th Instant, to us the Commissioners on the Part of Pensilvania, setting forth that you the Commissioners on the Part of Maryland having acquainted those on the Part of Pensilvania that you are willing to run the Circle mentioned in the Deed

of Bargain and Sale and Deed of Feoffment of Newcastle in the manner you have frequently before offered (which by your Papers appears to be a Circle of somewhat less than four Miles Diameter, or less than two Miles Radius) and we, the Commissioners on the Part of Pensilvania, insisting that we can only run a Circle of 12 Miles Radius, by reason whereof the Commissioners on both Sides not being able to agree in the Dimensions of the Circle so to be run about Newcastle, you therefore, in order that you may endeavour to do and execute so much of the Articles and Commissions as may be found Practicable by a joint Agreement, propose and offer to us the Commissioners of Pensilvania to proceed to Cape Hinlopen, in order to proceed in fixing the Cape and running the East and West Line directed by the said Article to be run from thence, we the Commissioners on the Part of Pensilvania, that our Sense of the whole Affair now depending between us and the Nature of this last Proposal may more clearly and fully be understood, we believe it incumbent upon us briefly to state the Case, which will the better enable us to give you a proper Answer. We must then crave leave to take Notice that the Province of Maryland and the Province of Pensilvania, with the Tract now called the Counties of Newcastle, Kent and Sussex on Delaware, bounding on each other, their Limits, for above these 50 Years past, have lain undetermined, by means whereof many Disputes, and much Cause of Uneasiness must necessarily from time to time have arose between his Majesty's Subjects, Inhabitants of the respective Borders, to the Disturbance of the Quiet and Peace of both Governments: for the effectual Removal of which the Proprietors, on both Sides, in the Year 1724, but, afterwards much more fully, entered into the most amicable Measures, and, by Articles, solemnly concluded the 10th Day of May 1732, agreed on their respective Boundaries to be fixed without delay, by Lines in the said Articles particularly expressed, and for the moving all Doubts and Mistakes more plainly directed by a Plan or Map printed thereon, and Commissioners, on both Sides, in pursuance of the said Articles, were appointed and authorized for executing the same, and as the whole Tenor of those Articles express the most tender regard in the Proprietors, on both Sides, for the Security, Quiet and Ease of all his Majesty's Subjects concerned therein, so, they declare that their Commissioners should proceed, on their Part, with all the Fairness, Candour and Dispatch that reasonably may be in the Business enjoined them. With how sincere a Satisfaction the Account of such an Agreement was received, not only by all those whose Possessions near the Borders had been liable to Dispute, but all others who had long wished to see that Subject of Discord removed,

we need not mention. We the Commissioners for Pensilvania, though Age and Infirmities had rendered divers of us less fit for the Fatigue, yet, on a reasonable Expectation of seeing Peace and Tranquillity between these neighbouring Governments fully and effectually Established, cheerfully undertook the Charge; but, however sincere the whole Tenor of those Articles shews the Intention of the Proprietors, themselves, to have been, in agreeing on and executing them, it is, with a very deep Concern, we are obliged to take Notice that the Conduct of the Commissioners of Maryland has hitherto appeared to be directed to a different View, which we collect from these well-known Instances; the first Meeting being appointed by our respective Governors to be on the 6th of October 1732, at Newtown in Maryland, when six of the Commissioners of Pensilvania there met a competent Number of yours, the Validity of our Commission from our Proprietors, so exactly agreeable to the Directions of all the contracting Parties to the Articles, was scrupled by you, because not signed by certain other Persons who were no Parties at all. As this beginning gave us some Apprehensions, we immediately proposed what is usual and necessary in all such Cases, that, for the better preventing all Disputes and Misapprehensions, a Clerk or Clerks should be appointed for taking Minutes of our Proceedings, yet, this could, by no means, be obtained; It was, however, then agreed that the said Article for running the Circle about Newcastle being the first in order, and about which great Part of the Work depended, we should first meet there to proceed on that Circle as the first Thing necessary to be done by us, and thereupon adjourned to meet at Newcastle the 30th of the said October: At our Meeting at Newcastle the 30th of October, pursuant to the preceding Appointment, having reason, from the Tenor of our Commissions, to expect we were then immediately to proceed in the Business of the Circle, for which we had fully provided Surveyors and all necessary Instruments on our Part, instead of this, it was demanded of us on our Part that we should produce the Charter for our Province, and the Deed of Feoffment for Newcastle; with which, though we were fully satisfied (since they are all largely recited in the Articles) we had then nothing at all to do, yet, to shew our Inclination to oblige you, one of our own Number condescended to take a Journey to Philadelphia for them, and being brought, the next Step on your Part, was to start a Difficulty about finding the Center of the Circle; but this, we shewed, from the Words of the Articles and the Draught, might easily been found and agreed on; yet, you positively insisted on the Difficulties of it, as a Matter out of your Power; and, therefore, proposed a long

Adjournment, that you might, in the mean time, have an Opportunity of consulting your Lord Proprietor (whose Arrival in Maryland, you said, was daily expected.) At that Meeting we again strenuously insisted on the Admission of a Clerk, or that Minutes of our Proceeding should be taken by joint Consent, that what should pass between us in our Conferences might be reduced to some Certainty; but this was as obstinately opposed, and nothing, but an Adjournment, insisted on; to which we, at length, condescended for about three Months, because of the Winter Season, viz. to the 1st of February then next ensuing.——Being again met, at Newcastle, on the said 3d of February, when our Commissioners might reasonably expect you had then received from your Lord Proprietor (who had arrived many Weeks before) full Instructions for the removing the Difficulties started about the Center, all the Answer given on your Part was, that his Lordship had left it to his Commissioners; so that the same Objections still remained, and, then, a new Doubt was raised about the Diameter of the Circle; this, indeed, appeared by the Articles and our Commissions, to be put beyond all possibility of Dispute, by the plain and express Words of the 2d Article viz. that there shall be the said Circle, mentioned in the said Charter for Pensilvania and Deed of Bargain and Sale of Feoffment of Newcastle (or so much thereof as is requisite) drawn and marked out at 12 Miles Distance from the Town of Newcastle, which 12 Miles shall be 12 English Statute Miles; yet, notwithstanding the Plainness of these English Words, you thought fit to declare you were not satisfied in that Point, and, then it was, that, on a Question proposed to us, which required to be fully and particularly answered on our Part, and therefore demanded Time and Application, though some of our Number attended, yet, because, through the Indisposition of some others, we delayed Meeting an Hour or two longer than one of the times mentioned the preceding Night for our Adjournment, you were pleased intirely to withdraw; and, though our Commissioners attended you, about Noon, of the same Day, and both yours, and ours, met a full Hour after that time, and dined together, yet, you absolutely refused to join with us any more, and, notwithstanding you had two several Notices from us, agreeable to the Tenor of the Articles, to meet us again, First, the same Evening after, the 3d of February, and, on your Neglect of that Notice, again, on the Second, or Monday of next Week, being the 5th of the Month, you left Newcastle on the 4th, and returned to Maryland. Again, by an Express from Philadelphia to Annapolis, we sent you another Notice to meet us at Newcastle the 16th of April, but, rejecting this, by the same Messenger, you sent

us another Notice, to meet you at Joppa, a small Village in Maryland, on the other Side of the Bay, and at 50 Miles distance at least from where any part of our Business could lie; yet, this Notice of yours, however unreasonable, that we might not be wanting in any thing within our Power that might contribute to carry on the Work, five of our Number complied with, and attended your Commissioners there. At Joppa we found what you had there to propose was, that we should adjourn to Cape Hinlopen; but this being shewn to be irregular, and inconsistent with the Tenor of the Articles, till the Circle about Newcastle was fixed, as divers of your Number (as you said) were obliged to wait on your Lord Proprietor to Burlington, it was mutually agreed that we should adjourn to Philadelphia. Where, being met, without agreeing on any thing further, another Adjournment was proposed; which Adjournment, because (as it was alledged on your Part that you must necessarily attend his Lordship at his embarking for Britain, and because of the unfitness of the Season in the Month of August for the Business of Surveying in the Woods) was agreed to be at Newcastle the 3d of September last. At that Day, we accordingly met, and, then, it was proposed to us that we should join with you in running a Circle, or part thereof, whose Diameter is somewhat less than four Miles, which we absolutely refused, for the plain Reason then given, but, on the other hand, we desired you to join with us in running a Circle, or part thereof, of 12 Miles Radius, as expressly directed in the Articles and our Commission; but this, you equally refused to comply with; and, seeing we appeared then to be at a stand, you proposed an Adjournment for further Consideration; which was yielded to on our Part, to be here at Newcastle the 14th of this Instant November; here accordingly, we met, but finding no result from the further Consideration proposed at the last Adjournment, but that you remain fixed in agreeing to no other Circle than one of somewhat less than two Miles Radius, to which, you well know, we never can submit, as you also know that, if we should so far forget our Self, and our Charge to comply therewith, the work, when done, would be entirely void, as being contrary to the express Words of the Articles and our Commission, you have, now, thought fit to propose that we should go to Cape Hinlopen, in order to proceed to fixing the Cape, and running the East and West Line directed by the third Article to be run from thence. Now, to come to a full and particular Answer to this Proposal, we, the Commissioners on the Part of Pensilvania, say, that we have thought it enumbent on us, at all times, to attend the Work enjoined by our Commission, according to the true Tenor and

plain Meaning thereof; that by the Articles, and our said Commissions, the first Business required to be done by us is the running of a Circle about Newcastle, or so much thereof as is requisite, at the Distance, or by a Radius, of 12 English Statute Miles, directed in such express Terms that, we conceive it impossible to Mistake the meaning of them, that so much of the other Work depends upon this Circle (as the South and North dividing Line, particularly, is to be divided by it) that, without some certain Assurance that this Circle could be fixed with in the time limited, it would be Labour and Expence entirely lost to set about it: You cannot, therefore, but allow us to be clearly of the Opinion that, notwithstanding you have, hitherto, as well to your own Fatigue, as ours, kept up the Adjournment, that have been made, yet, for some Reasons, best known to your selves, it has not, from your first Meeting with us (as we conceive) appeared that you really intended to carry on and finish this important Work, so much wanting for quieting the Minds of the People and establishing the Tranquility of both Governments; but, on our Parts, we are, and shall be, ready to proceed in the Business according to the true Tenor and Directions of our Commissions; and, as we conceive all other Measures wholly useless, so, we must insist on saying that, for the Reasons herein given, we cannot depart from Newcastle in order to proceed on any other part of the Work, before the necessary one of running the Circle as directed in the Articles be first done. Newcastle, 17th of November 1733. Isaac Norris, Samuel Preston, James Logan, A. Hamilton, James Steele.

Novemb. 19.

To the Commissioners appointed on the Part of Pensilvania for running, marking and laying out the Lines, Limits or Bounds between the Province of Maryland and the Province of Pensilvania, &c. Gent. Your Answer of 17th Instant, to our Proposal of 16th Instant, to proceed to Cape Hinlopen, lays us under a Necessity of truly, and briefly, stating the Proceedings and Behaviour of the Commissioners, on each side, which will fully justify such Proposal. For which purpose we must admit that the Province of Maryland and the Province of Pensilvania are bounded on each other, but we must observe that, altho' the Bounds designed for the Province of Maryland by the Royal Charter are sufficiently described, yet, for want of a proper Observance of such Bounds, many Encroachments have been made into the Province of Maryland, which necessarily created Disputes and Uneasiness between his Majesty's Subjects of the two Provinces. It is true Articles were concluded the 10th Day of May 1732, between the Proprietaries of the said Provinces

for fixing the true Boundary of the Circle about the Town of Newcastle, and for determining what should be the Limits, when run and marked, of the Provinces of Maryland and Pennsylvania, and the two Counties now called Kent and Sussex on Delaware; and, altho' our earnest Endeavours, in discharge of our Duty enjoined by the Articles and Commission, have not hitherto had the desired Effect, yet, we can, with much Reason, please ourselves in thinking that we shall not deserve (even from you) that severe and uncharitable Imputation of our Conduct tending to a different than the Execution of the Articles and Commission, when we shall have fairly represented, and brought to your Recollection, all the several Instances which, we will suppose, you have rather mistaken or forgot, than wilfully misrepresented. The first Meeting being at Newtown, in Maryland, the 6th of October 1732, the Commissions empowering the Commissioners on each side to act in the Execution of the Articles were inspected; and, surely, it behoved the Persons authorized, to consider their Powers, in such manner as they might be satisfied whether they were sufficiently ample for the Purposes designed; nor can we conceive how that first step of prudent caution, could give the Commissioners of Pensilvania any Apprehensions, unless the Commissioners of Pensilvania were themselves determined before-hand, and thought the Commissioners of Maryland obliged to proceed in the execution of the Articles whether the Commissioners of Maryland were convinced, or not, of their Power, or of their being in the right or wrong in their Behaviour. Your mention, of a Proposal being made to you at that meeting, and repeated at the Meeting on the 30th of October at Newcastle, of the Admission of a Clerk, or that Minutes should be taken by a joint Consent, must, upon recollection, seem very strange, even to yourselves, for an Insinuation is endeavored to be raised that no Minutes of what passed, at either of those Conferences, was reduced to a Certainty: Be pleased, Gent. to review your Papers, and, we presume, you will find a Minute, taken of the Proceedings of the Commissioners at the Meeting of the 6th of October at Newtown, for we affirm that we have such Minutes, in the Hand-writing of one of the Commissioners of Pensilvania, and, suppose, a Duplicate of the same is in your Possession. We must not impute this Misrepresentation to any want of Candour, but meer Forgetfulness, and, as a Minute was so taken, at the first Meeting, how could it be supposed such a Method would be discontinued, in the After-meetings, or make your Repetition necessary? And we apprehend, neither one, or more, Clerks could, with so much Satisfaction and Certainty, reduce any of the Proceedings into Writing, as the Commissioners themselves,

either jointly or separately might do in the manner observed at the first Meeting.—You are pleased to say it was agreed, at the first Meeting, that the 2d Article for running the Circle about Newcastle, being the first in Order, and upon which great part of the rest of the work depended, the said Commissioners should first meet there, to proceed on the Circle as the first thing necessary to be done by the said Commissioners; Would not any one imagine that these were the Words, or Purport, of the Minute, taken at the first Meeting, of the Proceeding and Adjournment; but, to our great Astonishment, we cannot find, in that Minute, the least Mention of the Commissioners Sense being that the running out the Circle about Newcastle was the first thing necessary to be done; nor, indeed, is there any Notice taken of what passed at that Meeting in the said Minute, save that the Commissions and Articles were read, and that the Commissioners did unanimously (agree) that they, or a sufficient Quorum of them, without further Notice, should meet at the Town of Newcastle, on Delaware, on Monday the 30th of that Instant October, in order to proceed and mark out the Circle in the said Agreement mentioned. We forbear guessing at, or at least animadverting on, what might be the Occasion of your asserting, in your Answer, that to be, which does not appear by the Minute taken. The Commissioners of Maryland attended, on the 30th of Octob. at Newcastle, pursuant to their then last Adjournment, with their Surveyors and all necessary Instruments on their parts, for their Proceeding on the Business of the Circle, but, for their more fully understanding the Nature of what they were enjoined to execute, they did require, from the Commissioners of Pensilvania, a Perusal of the Charter of Pensilvania, and Deed of Feoffment, and for which, we think, they had good right, those Deeds, being referred to in the Articles: and that, altho' the Commissioners of Pensilvania, by having such Deeds in their Possession, had satisfied themselves that they were all largely and truly recited in the Articles, yet, the Commissioners of Maryland could not arrive at the same Satisfaction, before those Deeds were produced to them by the Commissioners of Pensilvania: You say, very truly, in taking Notice that a Difficulty was started, at that Meeting, about finding the Center of the Circle, and, with as much Truth, we can say, that we apprehend the Commissioners of Pensilvania, as well as the Commissioners of Maryland, thought it of so much Weight that an Adjournment was readily agreed on, and perhaps the Hopes of some Endeavours to obviate that Difficulty, between one of the Pensilvania Proprietors then in Philadelphia and the Lord Baltimore (who was then shortly expected) might conduce to

a ready Disposition in the Commissioners for an Adjournment: but, we beg leave to take Notice, that the same Difficulty has not, as yet, been removed: nor have we been able to comprehend how any Words of the Articles, or the Maps, can denote the Place, or the Centre, of that Circle; Nor can we omit observing, on the Expression of the Commissioners of Maryland proposing a long Adjournment, when some of the Commissioners of Pensilvania, at a Meeting on the first Day of February, expressed their Thoughts, that, considering the Season of the Year, the meeting together was rather too early, we are at a Loss to know, why, at the Meeting, on the first, the Commissioners of Pensilvania should have greater Reason to expect the Commissioners of Maryland had received from the Lord Proprietary full Instructions for removing the Difficulty, than the Commissioners of Maryland might have, to expect the Commissioners of Pensilvania had received Instructions from one of their Proprietaries? It was a Difficulty which affected the Execution of the Articles, and thereby incumbent on the Commissioners, on both Sides, to endeavour the Removal of it, but his Lordship was unwilling to interpose in this Matter, being apprehensive that if, at once, the Direction of the Proprietaries, who were Principals in the Agreement, was admitted to influence the Commissioners in the Explanation of the Trust committed to them, it might have a Tendancy rather to create, than reconcile, Differences, and, for that Reason, we think, his Lordship, with great Candour, answered, that he had left it to his Commissioners. We desire to remind you, Gentlemen, that, altho' the Objection of the Center still remained, yet, the Commissioners of Maryland, in order to shew their Candour and Willingness to proceed in the Execution of such Part of the Articles as could be agreed upon, proposed the Consideration of the Circle directed to be run about Newcastle. We confess that, notwithstanding the extreme Plainness of English Words, which you are pleased to assure us is in the second Article, yet, we cannot help thinking, and saying, that, as we have formerly conceived, and often declared to you, so we repeat the same Opinion, that, either, they imply a Contradiction, or the Dimensions intended and directed by that Article, are different from what you have insisted upon. We omit, at this time, the several Reasons urged by the Commissioners of Maryland in Maintenance of their Opinions, but, in discussing the Doubt, raised about the Dimensions of the Circle, the Commissioners of Maryland did declare that they thought Mathematicians, if advised and consulted with, might give the Commissioners, on both sides some Satisfaction for the Understanding the Circle contained in the Deed of Feoffment, or Bargain and Sale, of Newcastle,

and, therefore, in the Morning of the 2d Feb. it was proposed, and agreed, to consult with Mathematicians, and that the Mathematicians should deliver their Opinions in the Presence of each other, before the Commissioners, and argue thereupon at five a Clock in the Afternoon, of the same Day. It must be remembered that the Commissioners, being met, on that Afternoon, the Commissioners of Pensilvania acquainted the Commissioners of Maryland that one of their Mathematicians, with whom they intended to consult, was so ill of the Gout that he could not, that Afternoon, attend, and desired the Matter and Question might be reduced into Writing, and that, if he could not attend the next Day, the Commissioners of Pensilvania would procure his Answer in Writing. The Commissioners of Maryland, that no Time might be lost in forwarding the Execution of the Agreement offered to the Commissioners of Pensilvania to go with them, that Afternoon, to the Place where their Mathematicians were, and carry their own Mathematicians to the same Place, which, the Commissioners of Pensilvania (for Reasons only known to themselves) refused; after which, a Question was reduced into Writing, for the Consideration and Opinion of the said Mathematicians, and the Commissioners of Pensilvania had a Paper, containing the same, in order to consult with their Mathematicians thereupon, as had been before mentioned, and resolved upon, against the next Morning, but, to the Surprize of the Commissioners of Maryland, they, the Commissioners of Pensilvania, tho' sent to, and often called upon, neglected their Attendance pursuant to their former Day's Adjournment, in a Manner too well known and supported to need any particular mention, at this time, of the Circumstances thereof. We must own, you were so obliging and civil as to give us an Invitation to a very handsome Entertainmēt, on the same Day this Non-attendance happened. But we must take the Liberty of making a Distinction between a Meeting of the said Gentlemen, as Commissioners, pursuant to a regular Adjournment and Appointment, and a Meeting in a common Conversation or Company. The last, but not the first, kind of Meeting was had, on that Day, after the Default of the Commissioners of Pensilvania in the Morning; and this Behaviour of the Commissioners of Pensilvania, we think, justified the Commissioners of Maryland in their Departure from Newcastle to Maryland, since there appears a Design, in the Commissioners of Pensilvania, by such Non-Attendance to frustrate the Design of the Articles, by which means the Commissioners of Maryland had the greatest Reason of an Advantage accruing to the Lord Proprietor of Maryland, in his Claim of the Penalty mentioned in the Articles; notwithstanding which, his Lordship, under a

reserve of that Advantage, thought fit to permit the Commissioners still to endeavour the Execution of the Articles, and, for that reason, by Letter, dated the 15th of Feb. 1732, directed to and acquainted the Governor of Pensilvania, one of the Commissioners, that his Commissioners had, notwithstanding that Default, liberty from him to meet the Commissioners of Pensilvania the first Monday in May then next, at Joppa, in Baltimore County, in Maryland. The Commissioners of Pensilvania, after this Letter, thought fit, by a Letter dated 28th March 1733, to offer a Meeting at Newcastle on 16th of April then next, but, by the same Messenger, the Commissioners of Maryland, by a Letter, with their particular Reasons, repeated the offer of a Meeting, on the before-mentioned first Monday in May, at Joppa, and the Commissioners of Maryland then mentioned that they could not see the necessity of Meeting at Newcastle, rather than any other Place, before the Differences in their Opinions and Judgments were adjusted. At a Meeting of a Quorum of the Commissioners, at Joppa, the Nature and Dimensions of the Circle were, again, debated, and that Debate was carried on by an Exchange of Papers. We are really sorry, Gentlemen, to be obliged to remind you, again, of what seems to have slipt the Memory, or which you have overlooked, in the Perusal of those Papers. You say that what the Commissioners of Maryland had there to propose was, that the Commissioners should adjourn to Cape Hinlopen; if you mean, as you seem to intimate, that that was the only Proposal, pray examine the Papers there exchanged and you will find, by one dated 8th May 1733, the Commissioners of Maryland proposed to the Commissioners of Pensilvania to run out a Circle whose Circumference should be 12 Miles about Newcastle, and also proposed to hear any Arguments, or receive any Information, from other Mathematicians than their own, in case the Commissioners of Pensilvania differed from the Commissioners of Maryland in Judgment about the said Circle; what did the Commissioners of Pensilvania answer to those Proposals? To the first, they declared their Opinion, that a Circle whose Circumference was 12 Miles was not the Circle, but a Circle whose Radius was 12 Miles, was the only Circle directed by the Articles; and, to the second Proposal they conceived they had no Need or Authority to refer the Construction of the Circle, &c., to any Person whatsoever. Had the Commissioners of Maryland desired the Commissioners of Pensilvania to refer the Construction of the Circle to any Person, in such manner, as by such Reference, and the Opinion of the Referee, thereon, the Commissioners would have Bonnd themselves in the Execution of the Articles, the Commissioners of Pensilvania's Answer would have been very just; but, to reject a Proposal to

procure some better Information and Understanding, in a Point of the Articles where Doubts had arose, we must submit how reasonable it was; for such your Denial tended to force us, against our own Conviction, to what you, and not ourselves, should think just and right. Thus, the Commissioners of Maryland were so unhappy as not to have either their Proposal of Proceeding to Cape Hinlopen, or that of receiving Information from Mathematicians, concurred with by the Commissioners of Pensilvania; whereupon, since nothing could be there agreed upon, the Commissioners, by Papers exchanged between them 9th of that May, made an Adjournment to Philadelphia, and, as we apprehend, for the mutual Convenience of both Commissioners; and this we have the greater Reason to say since, the Motive, mentioned by you, of the Commissioners of Maryland desiring to attend his Lordship, is not taken Notice of in the Paper containing the Adjournment. The Commissioners did meet in May, at Philadelphia, and, from thence, an Adjournment was made to the 3d of Sept. last, for the Reasons mentioned in the Paper containing that Adjournment; and, what was offered, or refused, by the Commissioners of either side, will appear by the several Papers exchanged at that Meeting; and it was, from the Commissioners being at a stand (as you are pleased to express it) that the Commissioners of Maryland, always ready to make Proposals, or offer Expedients, for the Furtherance of the Execution of the Articles, so far declined an obstinate Perseverance in their Opinions, that they proposed an Adjournment, for a further Consideration.—We find that, notwithstanding our Hopes, the same Sentiments as appears, as formerly, with relation to the Circle; but why must we know that you can never submit to our Opinion of that Circle? We think our selves right, and therefore have reason to expect you'll in time be convinced of it; besides, such Arguments as these in your Answer may, with as much Propriety, be used by us against you, which we shall avoid, being sensible to carry no Conviction. We have offered, under the Disagreement we now labour, to proceed to Cape Hinlopen, in order to fix the Cape, and run the East and West Line from thence, and we are well convinced that such Proposal (tho' you have thought proper to reject it) is rational and expedient, for the following Reasons, viz. That that part of the Work must be done, as well as any other, before 25th of December 1733; That the Winter-Season is so much entered into, that no Probability of running the Lines, in that low and desert Country, later than this time, can be hoped for; and That the Tangent to the Circle of Newcastle depends, as much, upon running the East and West Line from Cape Hinlopen, as the same Tangent does upon the Circle.—Before we

leave this Matter, we must, in Answer to your mention of Age and Infirmities and Fatigues, take notice that the Commissioners of Maryland have constantly attended the several Meetings, at Newcastle, notwithstanding the most severe Season that has been for many Years known, notwithstanding the very great Distance from the Habitations of the Commissioners of Maryland, and notwithstanding the Debates and Disagreement amongst the Commissioners might, as well have been held at any other Place, as at Newcastle. Thus, we doubt, not of our having removed every surmise of our entertaining any other than a laudable View in the Execution of the Articles, and, upon the whole, with the same Frankness as we have hitherto used, we cannot help saying that, in our Opinion, no other Consequence can arise, from our Differences in Judgment, and your Refusal to proceed to Cape Hinlopen, than that, either, the Commissioners should continue at Newcastle till the 25th of December 1733, without running the Circle, or, depart from Newcastle, without further Adjournment: which we leave to your Consideration, 19th November 1733. The Original, whereof this is a Copy, was delivered by the Commissioners of Maryland, to us, the Commissioners of Pensilvania, contained in 16 Papers in Folio. Isaac Norris, Sam. Preston, James Logan, A. Hamilton, James Steele.

Novemb. 20.

To the Commissioners appointed on the part of Maryland for running, marking and laying out the Limits and Bounds between the Province of Maryland and the Province of Pensilvania, &c. Gentlemen. Were the Matter of your Reply, of Yesterday, to our Paper of the 17th Instant, as well supported, as the Manner of it is ingenious and civil, we own we should find our selves at a loss in answering it, but we must beg leave to say the Method you have taken in that reply is somewhat singular, for it is observable you admit what you think will not prejudice the Point you aim at, you pass over in Silence what cannot be denied, and avoid or distinguish away such Facts as (tho' true in themselves) are not to be found in what you are pleased to call Minutes, and, at the same time, with a masterly Freedom, advance, on your part, without the Aid of any Minutes at all, whatever you conceive may tend to your justification. Thus, you have endeavoured to justify the Objection made by the Commissioners of Maryland at our first Meeting at New-town, against the Validity of our Commission, by terming it a prudent Caution, and alledging that it behoved you to consider our Powers, whether they were sufficiently ample for the Purposes so designed. But our Complaint was not that our

Commission was considered, which you had regularly done in comparing your own and ours together, and finding them to agree in all things with each other, and with the Articles themselves (the Names and Titles of the Proprietors and Commissioners excepted) but you'll be pleased to remember this was not sufficient to satisfy you, for, after all your Inspection, you thought fit to object that certain Persons, who were no Parties to the Agreement, had not joined in granting our Commission; nor was this Objection, however groundless, given up; but only for that time waved; now this Fact, tho' not to be found in the pretended Minutes we are referred to, is yet most unquestionably true. In the same manner it is, to keep up your own Words, you say an Insinuation is endeavoured to be raised, that no Minutes of what passed at either of the Conferences (at Newtown, or the first at Newcastle in October 1732) were reduced to a certainty, and then, recommending us to the Re-visit of our Papers, you let us know there is such a Minute in being of what passed at Newtown. And, lastly, with a very civil Insinuation, are so kind as to charge this Misrepresentation, as you have called it, to the Account of our bad Memories. And here, we must confess ourselves at a Loss to understand what can be intended by an Insinuation raised, that no Minutes were reduced to a certainty, but, as to the Hardships the Commissioners of Pensilvania alledge that they have been laid under by those of Maryland, in denying to admit of Clerks, &c. the Case is briefly thus. The Commissioners on the Part of Pensilvania, when at Newtown, strenuously insisted on having a Clerk, or Clerks, to take Minutes of our Proceedings, and, when this was refused us, we then further insisted that one of our own Number, of each side, might be mutually appointed for that purpose, and to sign and exchange the Minutes between us; but this was, also, denied; nor can the Variety of Arguments that were used, on your Part, against taking any Minutes, in the just sense of the Words, be forgotten. By one, it was alledged to be altogether unnecessary; by another, that it would occasion much Writing and loss of Time; and one, in a particular Manner, expressed his Resolution not to sign any Papers, lest it might occasion his going into England; but not only Minutes, but even the word Adjournment was objected to, till it was proved, from the Articles themselves, to be truly necessary; and then, at last, all we could possibly obtain was that a Memorandum should be taken, in Writing. The full Contents of which are very well noted in your own fourth Paragraph to be confined to these Particulars, That the Commissioners met, the Commissions were produced, and it was agreed the Commissioners should, without further Notice, meet again

the 30th of that October, at Newcastle, to proceed on the Circle. But, to our surprize, when these Memorandums came to be delivered, it was absolutely refused, on your part, to have them signed in any manner at all. You, however, had one of them (you say) in the Hand-writing of one of our Commissioners, which was a Condescension, on our part, beyond what you thought fit to gratify us in, on yours; for the Duplicate we have is in the Writing of some Stranger, unknown to us, signed by no-body, and without the least Mark of its being a Minute that can have any Weight, or be of any Force whatever: Yet this Paper, such as it is, must, we presume, be the sole Foundation on which you really appear to divert your selves in concluding it must seem strange, even to us, that being possessed of it, we should complain of the want of Minutes, or, that having obtained that at Newtown, we should not be satisfied at Newcastle with the Expectation of the like Indulgence for the future. This we take truly to be the Sense of what you have said; yet, unhappily for your way of arguing, it fell out, at our then next Meeting at Newcastle, that tho' we had been, for four successive Days together, we do not find the least Memorandum of that kind, save in our own Minutes only. These extraordinary Methods of Obviating our just Complaints naturally afford Matter for a good deal of Observation, but we shall waive it, and only add, on this Subject, that, as we have always hitherto, so we must continue to differ from you in our Opinion of the best Method of taking Minutes, tho' we are not displeased with what you were, at length, prevailed on to fall into, for the first time, at Joppa. The Commissioners of Pensilvania have, most truly, said it was agreed at the first Meeting that the second Article for running a Circle about the Town of Newcastle, being the first in Order, and upon which a great Part of the Work depended, the said Commissioners should first meet there to proceed on that Circle, as the first thing necessary to be done by them, but say further, it no way appears they ever alledged that these Words were reduced to a Minute, and yet, that this was so agreed, is equally true in Fact, as if it had; therefore, of what Service it could be, to the Commissioners of Maryland, to make the Remark they have done, on that Fact, more than on many others, that most certainly passed, of which none at all were noted, save what has been mentioned, we cannot really discover? The Matter in it self is indisputably true, and, that it was so agreed, amongst the Commissioners, at Newtown, is equally true, which most certainly is sufficient. But to apply one of your own Words, we cannot forbear saying it is indeed astonishing, to us, to find that, in speaking of the Difficulty started about fixing the Cen-

tre, &c., you declare that you can in truth say you apprehend the Commissioners of Pensilvania, as well as those of Maryland, thought the Objection about it of so much Weight that an Adjournment was readily agreed on, when, on the contrary, we think it cannot but be still fresh in the memory of every Commissioner then present, that those for Pensilvania would never allow that there was any difficulty at all in it, but always declared they were well satisfied it was not easy to fix the Centre, and were fully empowered for it, without any Application for further Direction, in that, or any other, Point of the Articles; but, when the Commissioners of Maryland appeared so extremely scrupulous, and declared themselves under Difficulties, which by the arrival of the Lord Baltimore their Proprietor, who was then shortly expected, might possibly be removed, none of you, Gentlemen, who were then present, we presume, can forget the great Regard we of Pensilvania expressed for the Lord Baltimore on that Ocasion, our hearty Wishes for his safe Arrival, and our Confidence in his Honour, that he would always see his own Agreement fulfilled; but his Lordship, it seems, thought not fit to interpose, and, from thence, alone, it arose, as we then, again and again, repeated it to you, that we gave way to that Adjournment which, in our Paper, we truly a long one; but, you say, some of our Commissioners at the meeting in February, expressed their own Thoughts that the Meeting was too early, which, in the last page of yours, you have fully explained for them, in owning it the most severe Season that ever has been known. Your next Paragraph (the 7th) again forces us on that most disagreeable Task of repeating our surprise, but, after what we have very truly asserted to have been our sole Inducement to join in an Adjournment in November last to February; and that being under no doubts in our selves, we never had the Thoughts of applying to any of our Proprietors for further Direction, we hope you cannot possibly be any longer at a loss to know, from which Proprietor's Commissioners a Solution of the started Difficulty was to be expected? We agree with the Commissioners for Maryland, that in February, they very much insisted on taking the Opinion of Mathematicians, as a Direction, or at least as a Help, for understanding the Dimensions of the Circle mentioned in the Articles of Agreement. We also acknowledge, that the Commissioners for Maryland proposed a Question, which with great Solicitation, you were prevailed upon to put into writing, but, at the same time, you were so cautious that none of your Number should sign it; and we further own, that we not only agreed, but proposed, to hear the Mathematicians, on both sides, speak to the Di-

mensions of the Circle in the Presence of the Commissioners on the 3d of February in the Forenoon; but we likewise say, what we have repeatedly said before, that the true Reason for our proposing to hear Mathematicians was, because the Commissioners for Maryland having refused, as we have often noted, to admit Clerks for taking Minutes, and as the Commissioners for Pensilvania had no Evidence of any thing that passed between us, those on our Part were forced on this Thought of getting the Mathematicians before the Commissioners, as the best Expedient to have Witnesses to the Delivery of the Answer we were then to make to the Question of the Commissioners for Maryland; but we must beg you to excuse us, for not remembering that we ever intended, or proposed, to have the Answer of our Mathematicians in writing to the Question propounded to us by the Commissioners for Maryland; and this Answer, being somewhat large, and the Weather very severe, a longer Time than we expected was spent in the Copying; whence it was, that some of the Commissioners for Pensilvania were delayed, as we have said in our Answer, about an Hour or two after the time of the Adjournment; and then it was the Commissioners of Maryland thought fit to withdraw, and tho', immediately after their leaving the Room appointed for our Meeting, some of our Commissioners, in the most respectful manner, waited upon those of Maryland, and endeavoured to excuse the small Delay given them, requesting them at the same time to return to the Place of Meeting, which was not above 200 Yards from their Lodging, yet, all those Endeavours were in vain, and, though you stayed in Town from 12 o'Clock in the Forenoon of the 3d of February, the Time when you thought fit to withdraw, till the next Term, yet, no Importunities could prevail on you to meet us again; no Notice, by Word or Writing, was regarded; and, notwithstanding some of you were told by us that the small Delay of an Hour or two was, neither in Law or Equity, any Breach of the Articles, and that we were sure you would not venture to depend on it, but would find your selves under a necessity of meeting us again, yet, so pleased were some of the Commissioners for Maryland, with the imaginary Advantage, that you left Newcastle, and returned home, unkindly endeavouring (at least, some of you) to bring the Commissioners of Pensilvania under severe Censure for their neglect of their Duty. We hope to be excused if we cannot be so very courteous as to believe the Lord Baltimore's only View, when he wrote the Letter referred to in your Paper, was to permit his Commissioners to endeavour the Execution of the Articles; for we have much more reason to believe that his Lordship, from the Result of his own good Judgment, knew well that your De-

parture from Newcastle, in the manner before-mentioned, would be construed a direct Breach of the Articles on his Part, if the same could not be remedied by your meeting us again; but, as it seems agreed that his Lordship's Letter to our Governour was not a Notice within the meaning of the Articles, we cannot but observe the great Regard you paid to our Notice given you to meet us at Newcastle the 16th of April last; but, as in many other Instances, so, in this neglect of our Notice, you plainly shew at the same time your Opinion of our Authority and your own readiness (as you call it) to do every thing in your Power to forward the Execution of the Articles of Agreement. It is indeed very kind, in the Commissioners of Maryland, so frequently to put us in mind of what you modestly call our Forgetfulness; and, to be as civil as we can the same way, we desire you to remember, that what is contained in the Papers exchanged at Joppa, more than a small Part of what had been frequently and more largely talked to and treated of before that Time and the Adjournment, is only your Proposal of our going from thence to Cape Hinlopen, the Meaning of which we perfectly well understood; and, when you found we were not so easily to be imposed on, by such a Feint, you were pleased frankly to own that you, or some of you, were, at that Time, obliged to attend the Lord Baltimore to Burlington, and then proposed to meet at Philadelphia about the Time you expected his Lordship might be there; to which, for your Conveniency, we agreed, though you thought it worth your while to oppose having that inserted in the Minute of Adjournment; and, for the Truth of this, we need not rely on the Memory of the Commissioners on either Side: As we have been always ready to acknowledge every Truth alledged by the Commissioners for Maryland, so we now own what you say, that you have been very ready to make Proposals, and offer Expedients, &c., but we beg leave to say they must appear in another Light to us, than they have hitherto done, before we can agree these Proposals and Expedients had any tendency to the Execution of the Articles in the Terms in which they are expressed, or as they are generally understood. As to the Proposal of going to Cape Hinlopen, at this time you will excuse, for saying we well know it to be nothing but Amusement, and had we assigned no other Reason than this, for what we have said on that Head, you have now furnished us with a sufficient one, when you insist that no other Consequence can arise from our Difference in Judgment, but that, either, we must stay at Newcastle till the 25th of December, without running the Circle, or depart, without Adjournment; now, after this plain Declaration, that the Circle must not be run, is it not as plain a Consequence that

the running of the Line can be to no purpose? We are sorry we have occasion to repeat, what we have so often said, but as, in our Opinion, it is beyond all exception, just, we must ever abide by it, and say that it is, by running a Circle at the Distance of 12 Miles from the Town of Newcastle, only, that the Work enjoined us can be done according to the Tenor and Directions of our Commissions, for, other Authority, you, or we, have none. And, notwithstanding you seem to be determined, which perhaps with too good Reasons you believe must conclude us, yet, the just Views which appear throughout our whole Conduct in this Affair, we hope at least will be approved of by Superiors. Newcastle, Nov. 20th, 1733. Isaac Norris, Sam. Preston, James Logan, A. Hamilton, James Steele
Nor. 22.

To the Commissioners appointed on the Part of Pensilvania, for running, marking, and laying out the Lines, Limits, or Bounds, between the Province of Maryland and the Province of Pensilvania, &c., Gentlemen. It is with so much Reluctance we give you, or ourselves, any further trouble at this Time, in Vindication of our Conduct, truly represented, and justly supported, in the Paper of the 19th Instant, that we shall content ourselves with some few Remarks in Answer to your Paper of the 20th Instant. First, In our Detail of the Transactions between the Commissioners at such Meetings where any Minute was taken, we rely on such Minute for the Truth of what passed. In order to avoid the Force of this, you are pleased to endeavour, at one time, to distinguish away the Writing we called a Minute into something you name Memorandum; what essential Difference this Distinction makes, your own good Judgment will suggest. At another time you urge, that there were other Proceedings than what were contained in such Minutes, as in the Instance of the Minutes (for so we think we may call it) taken at Newtown, and the Minute taken at Joppa on account of the Adjournment; although we will not presume to question your Candour, in declaring what you positively remember, yet, we hope, a Truth, or Mistake of a material Fact, is much better proved from what was reduced into Writing, at the Time in which such Fact was supposed to have happened, than from the Uncertainty of Opinions, Memories, or Apprehensions. And what alledge to have been agreed on at Newtown, viz. that it was first necessary to run the Circle about Newcastle, proves the little Dependance to be had on Memory, for it seems improbable that that should be agreed to be the first necessary Work, since the Tangent does no more depend on the Circle, than on the Line from Cape Hinlopen. Secondly, At such Meetings, where no Minute or Memorandum happened to be

taken, we have been so fortunate as to advance nothing that can be denied. And we must confess, Gentlemen, you have shewn, in your Admissions, a strict Regard to Truth; but, at the same Time, you have attempted, with wonderful Dexterity, to vanish over, and give the Fact a different Hue, from which it ought to appear in. As, for Instance, you think fit to own, that the Commissioners of Maryland insisted upon having the Opinion of Mathematicians as a Direction, or at least a Help, for understanding the Dimensions of the Circle; and that the Commissioners of Pensilvania not only agreed, but proposed, to hear the Mathematicians speak to the Dimensions of the Circle in the Presence of the Commissioners of Maryland on the 3d of February in the Forenoon; but, indeed, you also say, that the true Reason for the Commissioners of Pensilvania proposing to hear Mathematicians was, because the Commissioners of Maryland had refused to admit Clerks for taking Minutes, and as the Commissioners of Pensilvania had no Evidence of any thing that passed, those of the Pensilvania Commissioners thought of getting the Mathematicians before the Commissioners, as the best expedient to have Witnesses to the Delivery of the Answer the Commissioners of Pensilvania were then to make to the Question of the Commissioners of Maryland. It is not said, nor can it be pretended (for we doubt not you would have spoke the Truth) that that true Reason was ever mentioned to the Commissioners of Maryland, and the Commissioners of Maryland, who have been always free, candid, and sincere, in this Transaction, never could suppose any reserve, or private meaning, in the Commissioners of Pensilvania, nor can the Commissioners of Maryland conceive the essential Parts of the Facts to be less true and sufficient for their Justification, because the Commissioners of Pensilvania had private Reasons for agreeing to such Proposals or Facts. You give us an undeniable Instance of yielding to the Force of Truth, when, in your Paper of the 20th Instant, you desire us to remember, that what is contained in the Papers exchanged at Joppa, more than a small Part of what had been frequently and more largely talked to and treated of before that Time and the Adjournment, was only the Commissioners of Maryland's Proposal of going to Cape Hinlopen; so that a small Part of what had been more frequently and more largely talked to, &c., is plainly admitted or have been proposed at Joppa; and that small Part, as you are pleased to term it, was to run out the Circle in the manner the Commissioners of Maryland conceived, and also to receive Information from Mathematicians about the Dimensions of the Circle; from whence it appears the Commissioners of Maryland had something else to propose to the Commissioners of Pensil

vania than the going to Cape Hinlopen, mentioned in your Paper of the 17th Instant. Nothing can more fully evince the exactly honourable Part his Lordship took, in what happened between the Commissioners, than the Direction he was pleased to give his Commissioners to renew the Meeting after the Default of the Commissioners of Pensilvania, and his Refusal to interpose in the Explanation of the Articles; by the First, he shewed his generous Willingness that the Articles should be executed, and, by the last, he declared he would not influence the Judgment of the Commissioners in the manner of Execution. What we have further to observe is, the Misapprehension you have entertained, either of our Declaration, or Determination, that the Circle must not be run. We do not insist, but declare our Opinion, that no other Consequences can arise, from our Differences in Judgment, and your Refusal to proceed to Cape Hinlopen, than, that either the Commissioners should continue in Newcastle, until the 25th of December 1733, without running the Circle, or depart from Newcastle, without further Adjournment, which Opinion, we apprehend, is very different from a Determination that a Circle must not be run. We have never assumed, or even pretended to, a masterly Freedom, but, by a Liberty becoming Truth, we hope we have done Justice to our own Behaviour in the Opinion of our Superiors. Newcastle, 22d of November, 1733. The Original, whereof this is a Copy was delivered to us, the Commissioners of Pensilvania. — Isaac Norris, Sam. Preston, James Logan, A. Hamilton, James Steele. *Nov.* 23.

To the Commissioners appointed on the Part of Maryland for running, marking, and laying out the Lines, Limits and Bounds between the Province of Maryland and the Province of Pensilvania, &c., Gentlemen, At our first Meeting here, on the 14th of this Instant, pursuant to our Adjournment in September, you were pleased to say, as you have often before told us, that you could not agree in running a Circle at the Distance of 12 Miles from the Town of Newcastle, and on the 16th proposed to us, in Writing, to go to Cape Hinlopen, in order to proceed in fixing the Cape as you were pleased to express it. We, in answer to that Proposal, found it necessary to shew that, in our Opinion, our Proceeding on that Part of the Work could be to no Purpose, if the other must be left undone. At the same time observing how, upon all Occasions, you seemed fond of expressing your great Readiness and Willingness to do every thing that in your Opinion might contribute to the Execution of the Articles. Those Professions let us naturally into an Examination of the Conduct of the Commissioners of Maryland, under the all Changes that have been in your Commis-

sions since the first Appointment, even from our first Meeting at Newtown, a Place so often mentioned, and to set the whole in a true Light, from whence, it might easily be seen, how far your Professions, and the manner of your Proceedings, agree. This Attempt of ours as naturally drew on a Recollection of the Proceedings of the Commissioners on your Part, and then, your Representation, we found, made it, again, necessary, in ours, to state the Proceedings of the Commissioners on both sides, in a manner as we presume could be liable to no Objection. You, in return to this, in your Paper of yesterday professing a Reluctance to give us, or your selves, any further Trouble in the Vindication of your Conduct, duly represented, and justly supported (as you are pleased to say) in yours of the 19th, you declare you shall content your self with a few Remarks on our Paper of the 20th; but we must beg you to excuse us, if, from all you have said in either of your Papers, we cannot discover any thing which has weakened the force of what we have, with great plainness, advanced in support of our Opinion, but will rather confirm us with every indifferent Person in the same; for, to observe on your first Remark, while you insist on a Difference between a Memorandum and Minute, as there may truly be a great one, if you will be pleased to take not only ours, but the Notion that all Men as we conceive must form, of what with any Justice can be called Minutes, viz. that they are plain and clear Notes of the Substance of what materially passes at the Conferences of Persons intrusted with the transacting an Affair of Importance, and such as derive an Authority from the Trust reposed in the Clerk or Clerks who take them, we say, if you will consider this, it will be evident, from all that has passed between us, the Subjects that you have fully justified our Complaints for the want of such Minutes, and could the Commissioners for Maryland have been prevailed on to agree with us, that such Minutes should be taken, and rendered Authentick by proper Signers, and exchanged, which we must believe was necessary in our Case, they should have been at full Liberty, as to us, to call them by what Name they pleased; yet, though they persisted in refusing to allow such Minutes, we were not so much wanting to our selves as to have no other Recourse for ascertaining what passed between us than to our Memories only; for we duly took, and kept Minutes, for our own use, some of which we once read at the Board, and though their Authority could not be admitted, by the Commissioners of Maryland, their Truth will stand above all Objection. The Methods we were obligd to take, at Joppa, for procuring some certain Evidence of our Proceedings, we need not mention, nor can there be any Occasion to speak further to the Affair of the

Mathematicians, the Papers that passed between us at Joppa, or the Lord Baltimore's Letter to our Governor, for all these, we conceive, sufficient Notice has already been taken, and therefore we shall only say, upon the Distinction you have endeavoured towards the Close of your Paper to make, between declaring your Opinion, and your being determined, that, if we misapprehended your Meaning, we assure you it was far from being a wilful Mistake: on the contrary, it will give us a great Pleasure to find you Change your Sentiments, and agree to run the Circle at the Distance of 12 Miles from the Town of Newcastle, as enjoined by the Articles: a Point from which we never can recede, and, without your Concurrence in this, we must be contented to submit to any Consequence that may arise from this Difference of Judgment, as you are pleased to call it. Newcastle, November the 23d 1733. Isaac Norris, Sam. Preston, James Logan, A. Hamilton.

Nov. 24.

There is one Paper more contained in the Schedule to the Defendant's Answer: which is the Commissioners parting Minute of the 24th of November 1733: but as that is fully stated in Folio 347 of our Bill, and is set forth verbatim at Folio 334, in the Body of the Defendant's Answer, it need not be here again inserted.

1737. *June 15.*

The foregoing Answer was put in.

1738. *April 13.*

The Defendant signed a Waiver of his Privilege.

April 20.

The Plaintiffs replied to the Defendant's Answer.

Nov. 27.

They served the Defendant with a Subpœna to rejoin.

Jan. 27.

The Plaintiffs gave a Rule to produce Witness.

Feb. 8.

The Plaintiffs obtained an Order for a Commission to be executed in the City of Philadelphia, and adjourned to the Town of Newcastle, &c. And at the same time it was ordered that the Defendant might take out a Commission to Maryland.

Mar. 13.

By another Order of this date the Defendant's Commission was to be executed at Annapolis, and adjourned to any other part of Maryland and the three Lower Counties.

1740. *Ap. 9. to Sept. 18.*

The Defendant's Commission was first executed.

Oct. 20. to Nov. 29.

The Plaintiffs Commission was executed.

Jan. 16.

The Defendant's Commission was returned.

1741. *July 30.*

The Plaintiffs Commission was returned.

Feb. 3.

The Defendant gave a Rule to publish.

Feb. 4.

The Plaintiffs, who had many Witnesses to examine in London, got an Order to enlarge Publication till the first Day of Easter Term then next.

1742. *April 28.*

The Plaintiffs obtained a further Order to enlarge Publication till the first Day of Trinity Term.

June 17.

The Defendant, who had but three Witnesses to examine here, and had himself given the Rule to publish in February before, obtained an Order to enlarge Publication, for a Month.

July 13.

The Defendant, again, obtained another Order to enlarge Publication, for three Weeks more.

Aug. 11.

Publication passed.

WRITTEN EVIDENCE WHICH IS PROVED IN THE CAUSE, AND WHICH THE PLAINTIFFS HAVE TO PRODUCE; TOGETHER WITH SOME OCCASIONAL OBSERVATIONS THEREON.

CHAP. I. *From the Discovery of North America to the Grant made by the Crown of Maryland to Lord Baltimore in the Year 1632.*

1584.

As Captain Smith's History, (hereafter mentioned) and many others, inform us, Queen Elizabeth granted Letters Patent to Sir Walter Raleigh, for the discovering New Lands and Countries, not actually possessed by any Christians. Captain Smith's Folio Voyages, Fol. 2.

1606.

As we are informed by Captain John Smith's History, (hereafter mentioned) he the said Captain Smith discovered several Parts of Virginia, particularly the Bay of Chesopeak, and the

Peninsula, mentioned in this Cause, and went on Shore, and gave Names to several Places. Captain Smith's Folio Voyages, Fol. 21, and the following Pages.

4 *Jac. I.* 1606. *Apr.* 10.

From the Chapple of the Rolls, a Copy of Letters Patent, under the Great Seal. Reciting that the King's Subjects, Sir Thomas Gates and divers others, had desired Licence to make Habitation, Plantation, and to deduce a Colony, of sundry of the King's People, into that Part of America commonly called Virginia, and other Parts and Territories in America, either appertaining to the King, or which were not then actually possessed by any Christian Prince or People, situate, lying and being, all along the Sea Coast, between 34 Degrees of Northerly Latitude from the Equinoctial Line, and 45 Degrees of the same Latitude, and, in the main Land, between the same 34 and 45 Degrees, and the Islands thereunto adjacent, or within 100 Miles of the Coast thereof; and, to that End, and for the more speedy Accomplishment of their said intended Plantation and Habitation there, were desirous to divide themselves into two several Colonies and Companies. The one, consisting of certain Knights, Gentlemen, Merchants, and other Adventurers of the City of London and elsewhere, which desire to begin their Plantations and Habitations in some fit and convenient Place between 34 and 41 Degrees of the said Latitude, all along the Coast of Virginia and Coasts of America aforesaid. And the other, consisting of sundry Knights, Gentlemen, Merchants, and other Adventurers of the Cities of Bristol and Exeter, and Town of Plymouth, which desire to begin their Plantations and Habitations in some fit and convenient Places, between 38 and 45 Degrees of the same Latitude, all along the said Coast of Virginia and America, as the Coast lyeth. The King grants that the said Adventurers of the City of London shall be called the First Colony, and shall begin their said first Plantation and Seat at any Place, upon the said Coast of Virginia or America, between 34 and 41 Degrees of the said Latitude; and that they shall have all the Lands, Woods, Soils, Havens, Ports, Rivers, &c., from the said first Seat of their Plantation and Habitation, by the Space of 50 Miles all along the said Coast of Virginia and America, towards the West and South West, as the Coast lyeth; and also, for the Space of like 50 Miles, all along the said Coast of Virginia and America, towards the East and North East, as the Coast lyeth, with all the Islands within 100 Miles directly over against the same Sea Coast; and all the Lands, &c., from the Sea directly into the main Land by the Space of 100 Miles, and that none shall plant behind them, towards the main Land, without the express Leave of the Coun-

sell of that Colony. And his Majesty likewise grants, that the said Persons of the Town of Plimouth, in the County of Devon, shall be called the Second Colony, and shall begin their first Plantation and Seat between 38 and 45 Degrees of the said Northerly Latitude, and shall have all Lands, &c., in like manner, 50 Miles each way on the Sea Coast, and all the Islands against the Sea Coast 100 Miles into the Sea, and all the Lands into the main Land 100 Miles; and that none shall plant behind them, without the Leave of the Council of that Colony. And the King ordains, that each of the said Colonys shall have a Counsell, which shall govern and order all Matters and Causes, which shall arise within the same several Colonys, according to such Laws, Ordinances, and Instructions, as shall be given and signed with the King's Hand, or Sign Manual, and pass under the Privy Seal. And the King grants and agrees with the Persons of the said first Colony, that he, upon Petition, will grant to them, by Letters Patent, all the Lands which shall be within the said Precincts limited for that Colony, to be held of the King, as of the Manor of East Greenwich, in free and common Socage only, and not in Capite. And in like manner agrees with the said Persons of the second Colony. This is proved by Paris to be a true Copy from the Roll, and is exhibit Rocha, No 1.

7 *Jac. I.* 1609. *May* 23.

From the Chapple of the Rolls. A Copy of Letters Patent under the Great Seal, Reciting the said former Letters Patent granted to the First and Second Colony jointly; and that the said first Colony, (which had already engaged themselves in the Business of the said Plantation) had requested a further Enlargement and Explanation of their said Grant, Privileges, and Liberties, and that Councillors and other Officers might be appointed to direct and manage their Affairs, as were not so remote from London, but might be ready at hand to give Advice and Assistance on all requisite Occasions. The King granted unto Robert Earl of Salisbury, and unto 627 other Lords, Knights, Gentlemen, Merchants, Captains, and Traders, by Name, and unto 55 of the Company of the City of London, and, unto 28 other Persons, by Name, that they, and those who they should admit, should be a Body and Cominallty perpetual, and should have perpetual Succession, and a Common Seal, and should be incorporated by the Name of the Treasurer and Company of Adventurers and Planters of the City of London, for the first Colony in Virginia. And the said King granted unto the said Treasurer and Company, and their Successors, all those Lands, Countrys and Territories in that Place of America called Virginia, from the Point of Land called Cape,

or Point Comfort, all along the Sea Coast, to the Northward, 200 Miles; and from the said Point of Cape Comfort, all along the Sea Coast, to the Southward 200 Miles; and all that Space and Circuit of Land, lying from the Sea Coast of the Precinct aforesaid, up, into the Land, throughout, from Sea to Sea, West and North West: And all the Islands, lying within 100 Miles along the Coast of both Seas of the Precinct aforesaid. To hold the Premises to the said Treasurer and Company, their Successors and Assigns, for ever, to their own Use. To be held of the King, as of the Manor of East Greenwich, in free and common Soccage, and not in Capite.—This is proved by Bulmer to be a true Copy from the Roll, and is Exhibit Rocha, No 2.

1612.

A Quarto Book, this Year printed at Oxford, (borrowed out of the American Library belonging to the Society for the Propagation of the Gospel in Foreign Parts)—intituled, A Map of Virginia, with a Description of the Country, &c. written by Captain Smith, sometimes Governor of the Country. At Fol. 1, and the following Pages, he gives an Account of the planting in America by the English in 1606, under the Degrees 37, 38, and 39. And describes the Bay of Chesopeak, and several other Rivers and Places in that Bay. And, at Fol. 110, he gives Captain Smith's Map of that Part of the Country, drawn by him in 1606, of which we shall say more hereafter. This Book is marked by White Kennett, Bishop of Peterborough, deceased, who gave it, and a great Collection of other Books, to the Society, with his Name, and is proved by Paris to be borrowed out of the said Society's American Library, and is Exhibit, Quarto Book, West-Indies, B.

18 *Jac. I.* 1620. *Nov.* 3.

From the Chapple of the Rolls, a Copy of Letters Patent, Reciting the former Joynt Letters Patent, of the fourth Year of the King, to the first and second Colonys both: Reciting also, the subsequent Letters Patent, granted to the first Colony, to make them a distinct and entire Body by themselves, giving unto them their distinct Limits, and Bounds; Reciting likewise, that the King had been, in like manner, petitioned, by the Adventurers of the second Colony, and their Associates, to avoid all Questions between them and the first Colony, to make the Adventurers of the said several Colony one distinct and entire Body, and to grant them such Estate, Liberties and Privileges as after mentioned. Now, for as much as the King has been certainly given to understand, by divers good Subjects, that have for these many Years past frequented those Coasts and

Territorys between the Degrees of 40 and 48, that there is no other Subjects of any Christian King or State, or by any Authority from their Sovereigns, Lords, or Princes, actually in Possession of any the said Lands, or Precincts, whereby any Right, Claim, Interest, or Title, may or ought, by that means, to accrue or belong to them, &c. His Majesty grants, that all that Circuit, Continent, Precincts, and Limits in America, lying and being, in Breadth, from 40 Degrees of Northerly Latitude from the Equinoctial Line, to 48 Degrees of the said Northerly Latitude, and, in Length, by all the Breadth aforesaid, throughout the main Land from Sea to Sea, shall be the Limits and Bounds, and Precincts of the said second Colony; and, to the End the said Territories may, for ever, be more certainly known and distinguished, the King wills that the same shall be called New England in America. And, for the better Plantation, Ruling, and Governing of the said New England in America, his Majesty ordains, that there shall be, for ever hereafter, in the Town of Plymouth, in the County of Devon, one Body Politick and Corporate which shall have perpetual Succession, which shall consist of the Number of 40 Persons, and no more, and which shall be called, The Council established at Plymouth, in the County of Devon, for the planting, ruling, ordering, and governing of New England in America. And accordingly his Majesty appoints the first 40 Persons (consisting of Privy Counsellors and others) for that Council, and incorporates them and their Successors, by the Name aforesaid, with sundry Powers and Privileges, and amongst others to elect a President of the said Council. And his Majesty gives and grants to the said Council established at Plymouth, and their Successors, "All the aforesaid Lands and Grounds, Continent, Precincts, Place, Places, and Territories, viz. That aforesaid Part of America, lying and being, in Breadth, from 40 Degrees of Northerly Latitude from the Equinoctial Line, to 48 Degrees of the said Northerly Latitude, inclusively, and, in Length, of and within all the Breadth aforesaid, throughout the main Lands from Sea to Sea. Together with all Lands, Soils, Grounds, Havens, Ports, Rivers, &c. Provided always that the said Islands, or any the Premises herein before-mentioned, and by these presents intended and meant to be granted, be not actually possessed or inhabited by any other Christian Prince or State, nor be within the Bounds, Limits, or Territories of that Southern Colony, heretofore by us granted." To hold to the said Council, their Successors and Assigns, for ever, to their own sole use, to be held of the King, as of the Manor of East Greenwich, in Soccage, and not in Capite. This is proved by

Bulmer to be a true Copy from the Roll. And is Exhibit, Rocha, No. 3.

Note.

Supposing that no State had been possessed of any Part of these Lands, (tho' it is certain the Dutch and Swedes were) yet, so long as the foregoing Grant to the Council of Plymouth subsisted, (which it did, until long after the Grant of Maryland was made to Lord Baltimore) the 40th Degree inclusively, was granted for Part of New England; and, consequently, no Part of that 40th Degree, while that Grant subsisted, could be re-granted by the Crown, either to Lord Baltimore, or to any other Person.

1624.

A Folio Book, this Year printed in London, intituled, The General History of Virginia, New England, &c., from their first Beginning, Anno 1584, to this present 1624. With the Proceedings of the several Colonies, &c., also the Maps and Descriptions of all those Countries, &c., divided into six Books. By Captain John Smith, sometimes Governor in those Countries, and Admiral of New England. This is the Book, mentioned in the Bill and Answer. At Fol. 41, he gives his Map of Virginia, again, as done in 1606, being a Copy of that which had been printed in the former Edition of his Work before, in 1612. And at Fol. 21, he gives the same Account, again, of the Discovery, and going a-shore, and giving names to Places, in the Bay of Chesopeak, and upon the Peninsula, mentioned in the Pleadings in this Cause. Two several Copies of this Folio Edition are spoken to by James Logan, Benjamin Eastburne, and F. J. Paris, as well as occasionally mentioned by other Witnesses. And these exhibits are Smith's Folio History, and Smith's Folio History J. S.

1625.

Another very large Folio Work, this Year printed in London, intituled, Purchas his Pilgrims, in 5 large Volumes. This Work is a well known Collection of vast Numbers of different Voyages and Discoveries. And, amongst others, the 4th Volume thereof contains, at Fol. 1691, the Description of Virginia by Captain John Smith, enlarged out of his written notes. This contains exactly, the like matter as the two former printed Editions of his Works, of the Years 1612, and 1624. And it also contains another Copy, exactly like the former, of Captain Smith's Map made of Virginia in 1606.—This Book is spoke to by Paris (and some other Witnesses) and is the Exhibit, Purchas's Pilgrims, Vol. 4.

Note.

The great Use of these several Editions of Captain Smith's History and Map is, to shew that his Map was thrice printed and published in England, in 1612, 1624, and 1625, and so, must have been well know in 1632.

Note also.

By all the three early Editions of Captain Smith's Map, the Line of the 40th Degree of Northerly Latitude, compleat, was laid down to be no more than 7 Miles more North, than the Head of Chesopeak Bay.

Note likewise.

Every one of these three Editions of Captain Smith's Map, contains the following Names and Descriptions of Places, which we shall by and by find to be mentioned in the Grant of Maryland, viz. It shews that there is a Peninsula; it contains the Names of the Bay of Chesopeak, Watkins Point, the River of Wighco, the River Patowomeck, the Place called Cinquak, and Cape Charles.

1630. *July 15.*

An Exemplification, or Inspeximus, under his Majesty's great Seal of the Province of New York, of the following Record, remaining in the Secretary's Office of that Province, (being proved additionally by two Witnesses in the Cause, viz. Thomas Noxon and William Vandespiegel, to contain a true Copy, and also a true Translation, of a Book of Dutch Patents, in the following Words, viz. We, the Director and Council of New Netherland, residing on the Island Manhatans, and Fort Amsterdam, under the Government of their High and Mightynesses the Lords States General of the United Netherlands, and the incorporated West-India Company at the Chamber of Amsterdam, testify and declare by these presents, that on the Day of the Date hereunder written, before us, in their own Persons, came and appeared Queskakotts, Ellsongues, Sironchusou, and Inhabitants of their Town, scituate on the South Corner of the Bay of the South River, and declare, voluntarily, and by the especial Direction of the Rulers, with the Consent of the Common People thereof, that they had since the 1st Day of June 1629, for and by reason of certain Parcel of Merchandizes which they acknowledge, before the passing of these Presents, to their good Liking and Satisfaction, to have received in their Power and Hands, and delivered to them, in a right, just and free Property to have transported, released, given over and assigned, as they do by these Presents transport, release, give over and assign, for and to the behoof of the Honourable Mr. Samuel Godyn now absent, on whose Words we, on due Stipulation, do accept thereof, to wit.

The Lands, to them belonging, situate on the South-side of the said Bay, called by us the Bay of the South River, stretching in length from Cape Hinloop to the Mouth of the said South River, about 8 large Miles, and up into the Country, in the breadth of half a Mile, stretching to a certain Cowplace or Meadow; by which said Meadow these Limits may be, evidently, on Sight distinguished.

And that, with all the Action, Rights, and Jurisdiction, to them, and their aforesaid Quality, belonging: constituting the said Godyn in their stead, Estate, real and actual Possession of the same: and giving him and his Assigns full Power and Authority to enter on, possess, use and retain the said Land: and thereof to transact and dispose, as with his own lawful acquired Lands: without the Releasors any Right in the least thereto, having, reserving or keeping, but warranting the same against all persons. All on good Faith, without Fraud or Deceit, &c. In witness whereof we have confirmed these presents with our usual Signature and our Seal hereto appending. Done on the Island of Manhatans 15 July 1630. This is Exhibit Dutch Records, New York No. 2, Fol. 3.

Note.

This not only shews that the Dutch were possessed of Manhatans (which is now New-York) in 1630, but had a Director and Council there, so early. And that this Purchase, by a Dutchman, so early as 1629, of Lands from the Indian Natives, from Cape Hinloop in the Bay of the South River, (now Delaware Bay) was past and recorded before the Dutch Director and Council of New-Netherlands (now New-York.) Of all which, there will be no sort of doubt, presently.

8 *Car. I.* 1632. *June* 20.

We have an Order that the Defendant shall produce his Original Charter, under the Great Seal, for Maryland, which he says, in his Answer, runs in these Words, viz.

REX &c. Omnibus ad quos &c. Salutem. Cum per dilectus & perquam fidelis sudditus noster, Cecil Calvert, Baro de Baltimore in Regno nostro Hiberniæ, filius & hæres Georgii Calvert Militis, nuper Baronis de Baltimore in eodem regno Hiberniæ patris in hærens vestigiis laudabili quodam & pio Christianæ religionis pariter, & imperii nostri territori dilatandi Studio flagrans, licentiam nostram, ut copiosam Anglicanæ gentis Coloniam, industria & impensa sua, ad certam quandam regionem, inferius describendam, in terra quadam, in partibus Americæ, hætenus inculta, & barbaris nullam divini Numinis notitiam habentibus in partibus occupati, deducere possit, totamque illam regionem, cum certis quibusdam privilegiis, & jurisdictionibus, ad coloniæ suæ, & regionis prædictæ salubre

regimen & statum pertinentibus, a regia nostra celsitudine, sibi & hæredibus suis dari, concedi & confirmari, humiliter supplicaverit; Sciatis igitur quod nos, lium & nobile, præfatorum Baronum de Baltimore, propositum & studium, regio favore prosequentes, ex gratia speciali, certa Scientia & mero motu nostris, dedimus, concessimus & confirmavimus, & per hanc præsentam chartam nostram, pro nobis, hæredibus & successoribus nostris, præfato Cecill' modo Baroni de Baltimore, & hæredibus & assignatis suis, damus, concedimus & confirmamus.

Totam illam partem peninsulae, sive chersonesus, jacentis in partibus Americae, inter oceanum ex oriente, & finem de Chesapeake ab occidente; a resid' ejusdem, per rectam lineam a promontorio sive capite terræ, vocato Watkins Point, juxta sinum prædictum prope fluvium de Wigheo scituatæ, ab occidente, usque ad magnum Oceanum, in plaga oriental' ductam, divisam; Et, inter metam illam a meridie, usque ad partem illam æstuarii de Delaware, ab aquilone, quæ subjacet quadragesimo gradui latitudinis Septentrionalis, ab æquinoctiali, ubi terminatur Nova Anglia.

Totumque illum terræ tractum, infra metas subscriptas: viz: transeundo, a dicto æstuario vocato Delaware Bay, recta linea, per gradum prædictum, usque ad verum meridianum primi fontis fluminis de Pattowomack, deinde, vergendo, versus meridiem, ad ulteriorem dicti fluminis ripam, & eam sequendo, qua plagam occidentalem & meridionalem spectat, usque ad locum quendam, appellatum Cinquak, prope ejusdem fluminis ostium scitnatum, ubi in præfatum Sinum de Chesapeake evolvitur, ac, inde, per lineam brevissimam, usque ad prædictum promontorium, sive locum, vocatum Watkins Point, (ita quod totius terræ tractus per lineam prædictam, inter magnum oceanum & Watkins Point divis' usque ad promontorium vocatum Cape Charles, & singula sua appenditia, nobis, hæredibus & successoribus nostris, integre remaneant excepta imperpetuum.)

Necnon omnes insulas, & insululas, infra limites prædictos.

Concedimus etiam, & confirmamus, eidem Baroni de Baltimore, hæredibus & assignatis suis, omnes & singulas insulas, & insululas, ab orientali prædictæ Regionis littore orientem, versus in mari, natas, vel nascentas, infra decem leucas marinas, ab eodem littore scituatas; Cum omnibus & singulis portibus, navium stationibus, æstuariis, fluminibus, & fretis, ad regionem, vel insulas prædictas, pertinentibus; Omnesque sundos, terras, campestria, silvas, montana, paludes, lacus, flumina, æstuaria, & freta, infra metas, terminos & limites prædictos, scituata, seu existentia, &c.—habend' tenend' possidend' & gaudend' præ-

dictam regionem, insulas, insululas, & cætera præmissa, præfatio modo Baroni de Baltimore, & hæredibus & assignatis suis, ad solum & proprium opus & usum ipsius modo Baronis de Baltimore, hæredum & assignatorum suorum, imperpetuum:— Tenend' de nobis, hæredibus & successoribus nostris, Regibus Angliæ, ut de Castro nostro de Windsore, in comitatu nostro Berks, in libero & communi Socagio, per fidelitatem tantum pro omnibus Serviitiis, & non in Capite, nec per Servitium militare.

Note.

We say no other English Map, of those Parts, was then extant, but Captain Smith's only.

This last Charter has such names of Places in it, that it is beyond presumption, that it was described from Captain Smith's Map.

We defy the Defendant to shew any Map, English or foreign, of that Time, but Captain Smith's only, that has all those Names of Places in it which are mentioned in his Charter.

And the Defendant will be under some Difficulty, to make a Part of a Peninsula, (which is the first Description in his Charter) mean to extend above the whole Peninsula into the main Continent, up to the 40th Degree compleat.

He will be under the greater Difficulty, to make such a Part of the Peninsula, as is bounded Eastward by the Sea only, extend up in to the main Continent, above all the Bay and above great Part of the River of Delaware; neither of which are mentioned for his Eastern Boundaries.

He will be under a third Difficulty, as his Bounds are taken from the South, and extend Northwards, only *usque ad* such Part of the Bay of Delaware on the North as lay under the 40th Degree, to extend it all through the whole 70 Miles of that 40th Degree, quite up to the 40th Degree compleat, especially as no Part of Delaware Bay runs so high as to the 40th Degree, but the very Head of that Bay is proved to be 30 Miles below Newcastle.

And he will be under a 4th Difficulty, as by the express Words of his Charter, his Bounds are to extend Northwards only *usque ad* such Part of Delaware Bay as lays under the 40th Degree, where New-England ends, to extend those Bounds to the Head and further Part of that Degree, when, we see, that New-England had, before, the whole 40th Degree inclusively, granted to it.

So that every Description whatever, contained in his Patent, (and, by the way, every subsequent Description, at any Time afterwards made by the Crown) all confine him to the 39th Degree compleat.

And, when so confined, then, his Ancestor asked, and the Crown granted, nothing, but what was hactenus inculta.

Under the last Chapter in this Brief, before we come to the Depositions, will be contained the Opinions of three great Lawyers, relating to the Construction of Lord Baltimore's Charter: which, tho' not Evidence, nor yet proved in the Cause, are yet extremely well worth the perusal, and much to our purpose.

CHAP. II. *From the Lord Baltimore's Grant in 1632, to the End of the Year 1663; during all which Time the Dutch and Swedes remained in the quiet Possession of what is now New York, and also of Delaware, which now makes the three Lower Counties, free from any Claim by Lord Baltimore, or by the English Crown, (and in one single Instance, down lower than 1663, viz. to 3 July 1664.)*

1633. June 28.

An Order of Council in the following Words. At the Star-Chamber, present Lord Keeper, Lord Privy Seal, and eleven other Lords. Whereas a Petition, heretofore presented to the Board by the Adventurers and Planters of Virginia, shewing, that, by reason of some Grants lately obtained of a great Proportion of Lands, and Territories, within the Limits of their Colony and Places of their Traffick, they were much prejudiced and discouraged in the Proceeding with the said Plantations, was, by his Majesty, referred to the Consideration of the Board, to the end their Lordships might examine and report the true State thereof, together with their Opinions concerning the same. This Day, the Lord Baltimore, who hath a Grant from his Majesty of a Proportion of the said Lands, and divers of the Principal Adventurers and Planters, being called before the Board, and their Lordships having heard the Allegations then made, on both Sides, did, for the better preparing of the Business against their next Sitting (appointed to be on Wednesday next) Order and direct, that the Lord Baltimore, and two or three of the said principal Adventurers, should forthwith meet, and confer together, and endeavour, amongst themselves, to accommodate the Points in difference, arising between them, or so many of them as they could. and to set down the same so agreed on in Writing; as likewise, such points, wherein they shall differ, together with their Exceptions and Reasons; and to present the same to the Board, at their said next Sitting; at which Time they are, likewise, to bring with them a Map of the said Plantation, upon View whereof their Lordships may better discern how the Proportion granted to the Lord Baltimore is limited and bounded. This is proved to be a Copy from the Council-Register by Dickenson, and is the Exhibit, Co-Off. No 1.

July 3.

Another Order of Council in the following Words. At the

Star-Chamber. Present, Lord Keeper, Lord Privy Seal, and 8 other Lords. Whereas an humble Petition of the Planters in Virginia, was presented to his Majesty, in which they remonstrate, that some Grants have lately been obtained of a great Proportion of Lands, and Territories within the Limits of the Colony there, being the Places of their Traffick, and so near to their Habitation, as will give a general Disheartening to the Planters, if they be divided into several Governments, and a Bar to that Trade which they have long since exercised towards their Supportation and Relief, under the Confidence of his Majesty's Royal and Gracious Intentions towards them, as by the said Petition more largely appeareth; Forasmuch as his Majesty was pleased, on the 12th of May last, to refer to the Board the Consideration of this Petition, that, upon the Advice and Report of their Lordships, such Order might be taken as to his Majesty's Wisdom should seem best. It was thereupon ordered, on the 4th of June last, that the Business should be heard the second Friday in this Term, which was the 28th of the last Month; and that all Parties interested should then attend, which was accordingly performed; And their Lordships, having heard the Cause, did then order that the Lord Baltimore, being one of the Parties, and the Adventurers and Planters of Virginia aforesaid, should meet together, between that Time and this Day, and accommodate their Controversy, in a friendly manner, if it might be; and likewise set down in Writing, the Propositions, made by either Party, with their several Answers, and Reasons, to be presented to the Board this Day, which was likewise accordingly done. Now, their Lordships having heard and maturely considered the said Propositions, Answers, and Reasons, and whatsoever else was alledged on either part, did think fit to leave the Lord Baltimore to his Patent, and the other Parties to the Course of Law, according to their Desire. But, for the preventing of further Questions and Differences, their Lordships did also think fit and Order that, Things standing as they do, the Planters, on either side, shall have free Traffick and Commerce, each with other; and that neither part shall receive any fugitive Persons belonging to the other, nor do any Act which may draw a War from the Natives upon either of them. And lastly, that they shall sincerely entertain all good Correspondence, and assist each other on all Occasions, in such manner as becometh Fellow-Subjects and Members of the same State. This is proved to be a Copy from the Council-Register, by Dickenson, and is the Exhibit Co-Off. No. 2.

Note.

The two last foregoing are real Orders of Council, and, because mentioned by Lord Baltimore, are here inserted; but they de-

termine nothing, either one way or other, nor are of any Consequence in the present Matter.

1635. *April 25.*

A Copy from the Papers remaining in the Office of the Lords Commissioners for Trade and Plantations, of a Minute made and recorded at a very solemn Meeting of the President (Lord Gorges) and Council of New England, which is intituled, A declaration of the Council of New England for the Resignation of the great Charter, and the Reasons moving them thereto. This Paper pathetically enumerates the Troubles, Charges and Loss of their Friends abroad, which the Adventurers had suffered, from the Time of their Grant till then; the many litigious Questions moved against them by the Virginia Company, both before the King in Council, and in Parliament at home, whereby the Adventurers grew disheartened, and that many of their ablest Supporters had died; that the French Ambassador had made a Claim; that, at length, other People got Patents, and intruded upon these Adventurers, and rent in Pieces his Majesty's original Grant, and these Adventurers designed Undertaking; and that Complaints coming over, to this President and Council, that had not sufficient Means to redress them, or to give Satisfaction to the Persons aggrieved, they were forced to Petition his Majesty, who referred it to the Lords to consider of the Means of Reformation; which Lords, finding fault with this President and Council, and calling for them from their Homes, far remote in the Country, at unseasonable times, to their great Charge and Trouble, whereupon the President and Council, after clearing themselves, referred it to the Lords, to do what they thought fit; who found Matters so desperate, as that they saw a Necessity for his Majesty to take the whole Business into his own Hands, if this President and Council could not rectify what was brought to ruin: who, finding it a Task too great for them to perform, rather chuse to resign all into his Majesty's Hands, to do as he pleased. After all these Troubles, and upon these Considerations, it is now Resolved, that the Patent shall be surrendered to his Majesty, with Reservation of all such Rights as any have been seized with, that it may please his Majesty to pass particular Grants to the President and Council, of such Proportions as they have mutually agreed upon, and as are before recorded in that Book: And so much they have thought fit to be recorded, that Posterity may know the Reasons and Necessities moving them to quit themselves of those Inconveniencys and Dangers, &c. This is proved to be a true Copy by Mr. Galibrand, and is the Exhibit Botra No 1.

May 1.

A Copy from the Original Papers remaining in the Board of Trade, of a Petition to the King, from Edward Lord Gorges, President of the Council of New England, in the Name of himself, and divers Lords and others of the said Council, setting forth that, forasmuch as they were, presently, to join in a voluntary Surrender of the Grand Patent of their Corporation, to his Majesty, they pray his Majesty to order his Attorney General to draw Patents, for Confirmation of such Parcels of Land, as by mutual Consent in their Court had formerly been allotted to them, with such Privileges and Immunities as heretofore they might have enjoyed with their Lands, by Virtue of the said Grand Patent. This is proved to be a true Copy by Mr. Gallibrand, and is the Exhibit Botra No 2.

June 7.

A Copy from the Books remaining in the Plantation Office of the Act of Surrender of the great Charter of New England to his Majesty. Whereby the President and Council, reciting their said Charter of the 3d of November, in the 18th of King James the 1st, do give, grant, assign, yield up and surrender to his Majesty, the said Charter, and the Libertys, Licences, Powers, Privileges and Authoritys thereby granted, and all their Right, Estate, Title, Interest, Claim and Demands, of, in and to the same. In Witness whereof (it is there said) the said President and Council had caused their Common Seal to be thereto put; and the Entry in the book has a Mark to it thus. L. S. This is proved to be a true Copy from the Book, by Mr. Gallibrand, and is the Exhibit Botra No 3.

Note.

This Original Surrender no where appears, neither is it enrolled in Chancery; for which Reason we took in some other Papers leading to it. But, of it self, it is a Matter sufficiently notorious, since Seven or Eight of our present Colonys sprung up, and were created, out of the old great New England Charter, since the Surrender thereof.

Note also.

That when the New England Charter was surrendered, the Crown might (then) grant the 40th Degree, if it could gain the Possession thereof.

Sept. 8.

A thin Quarto Book, printed this Day, Month and Year, intitled, A Relation of Maryland, together with a Map of the Country, the Conditions of Plantation, his Majesty's Charter to the Lord Baltimore translated into English, &c. which gives

an Account of the Adventurers under Lord Baltimore's Patent going to and first landing in the Country, on the 24th of Feb. 1633. At Fol. 13 there is Chap. 2, a Description of the Country, wherein it's said "that it is seated between the Degrees of 38 "and 40 of North Latitude, Virginia bounds it on the South, "New England on the North and the Ocean on the East." At Fol. 21 it is said thus, "You shall find, in the Southern Parts of "Maryland, all that Virginia hath naturally; and, in the North- "ern Parts, what New England produceth; and he that reads "Capt. John Smith shall see, at large, discoursed what is in "Virginia, and in Mr. William Wood (who, this Year hath "written a Treatise of New England) he may know what is "there to be expected." Again, at Fol. 38 and 39 (tho' mis- "mark'd Fol. 22 and 23) there is Chap. 6, Conditions propounded, "by the Lord Baltimore, to such as shall go or adventure into "Maryland." Again in Fol. 41. "There is conveniency of Pas- "sage thither in most Months of the Year, and any one that "will send unto Mr. Peasley or Mr. Morgan's House," (Note, in the Title Page it is said, that these Books were to be had of those two Persons) "may, there, be informed of the certain "Time, when any of his Lordships's Company is to go away, "and so save the Charge of unnecessary Attendance here in "London." The whole Book, indeed, is an Invitation to Persons to go over and settle there. But, what we prize it most for, it has a fair Map of Chesopeak Bay, and the Peninsula, with my Lord Baltimore's Arms upon it. In which Map the Lines of Northerly Latitude are laid down, and he plainly makes his Bounds in the Map, agreeable to what had been said in the Body of that printed Book, to begin at the 38th Degree compleat; and to end at the 40th Degree compleat. So far, it is a very early Claim to have to the 40th Degree compleat; but then he makes that 40th Degree compleat, to cut the Head of Chesopeak Bay, and not be any thing at all above the Head of Chesopeak Bay: (Whereas we have now granted to him many Miles up into the main Continent, as a valuable Consideration for his Agreement.) This Book is proved, in the Cause, by Dr. Stack, to have been 40 or 50 Years in the Custody of Sir Hans Sloane, a great Collector of old Tracts, and will be produced at the Hearing by Dr. Stack.

We have also an incomplete printed Copy of it, and a manuscript Copy of the Map, proved to be Copys thereof, (so far as they go,) by the same Dr. Stack; and is the Quarto Book Maryland 1635.

We have also another Copy of my Lord Baltimore's Map, contained therein, spoken to by Mr. Eastburne, and is in a large marbled Cover.

1638. *Apr.* 4.

Is the Copy of a pretended fictitious Order of the Lords of the Council, insisted on by the Defendant now; first produced and made an ill use of, before the Board of Trade, by his Grandfather, in 1685, and afterwards by the Defendant himself, *ex parte*, again, in 1734; tho' there was not then, neither is there now, any Thing like an original, or an authentick Copy of it; notwithstanding that the Council Registers of that very Day, are extant, and many other Orders are found therein of that very Date. This blank Paper is in the following Words, viz. At Whitehall the 4th of April 1638. Present Lord Archbishop of Canterbury, Lord Keeper, Lord Treasurer, Lord Privy Seal, Earl Marshal, Earl of Dorset, Lord Cottington, Mr. Treasurer, Mr. Comptroller, Mr. Secretary Cook, Mr. Secretary Windebank. Whereas a Petition was presented, to his Majesty, by Capt. William Clayborne, on the Behalf of himself and Partners, showing that, by Virtue of a Commission, under his Majesty's Hand and Signet, they, divers Years past, discovered and planted upon an Island, in the great Bay of Chesopeak, in Virginia, named by them the Isle of Kent, whereupon (they pretended) they had bestowed great Charges; and that the Lord Baltimore (as they alledged) taking Notice of the great Benefit that was likely to arise to them thereby, obtained a Patent from his Majesty, comprehending the said Island within the Limits thereof; and that they had likewise settled another Plantation, upon the Mouth of a River, in the Bottom of the said Bay, in the Sasquesahanoughs Country which the said Lord Baltimore's Agents there (as they alledge) sought to dispossess them of; pretending, likewise, great Injuries and Violence offered to them, in their Trade and Possessions in those Parts, by the said Agents, in killing some of the said Capt. Clayborne's Men, and taking their Boats, contrary to the said Commission and the express Words of a Letter from his Majesty, under his Hand and Signet; and therefore, besought his Majesty to grant, unto the Petitioner, a Confirmation, under the Great Seal, of his Majesty's said Commission and Letter, for the quiet keeping, enjoying, and governing of the said Island, Plantations and People, with other Additaments of Lands and Immunities in those Parts; and likewise, that his Majesty would refer the Examination of the said Wrongs and Injurys, to such as his Majesty should think fit, as by the said Petition more at large appeareth; Forasmuch as his Majesty was pleased, at Newmarket, on the 26th of February, 1637, to refer the consideration of the Petitioner's Request, unto the Lord Archbishop of Canterbury, the Lord Keeper, the Lord Privy Seal, and any other the Commissioners for Plantations, who should be near at Hand, and whom they pleased to

call, and withall to advise with Mr. Attorney General, for the preparing and settling the Grant desired, for his Majesty's Signature, and to examine the Wrongs complained of, and certify his Majesty what they thought fit to be done for Redress thereof, whereupon all Partys attending their Lordships this Day, with their Counsel learned, and being fully heard, the said Commission and Letter being likewise read, it appeared clearly, to their Lordships, and was confessed by the said Clayborne himself, then present, that the said Isle of Kent is within the Bounds and Limits of the said Lord Baltimore's Patent, and the said Capt. Clayborne's Commission (as it likewise appeared) was only a Licence, under the Signet of Scotland, to Trade with the Indians of America, in such Places where the said Trade had not been formerly granted by his Majesty to any other; which Commission, their Lordships declared, did not extend, nor give any Warrant to the said Clayborne, or any other, nor had they any Right or Title, thereby, to the said Island of Kent, or to Plant or Trade there, or in any other Parts or Places, with the Indians or Savages, within the Precincts of the Lord Baltimore's Patent: and their Lordships did likewise declare, that the aforesaid Letter, under his Majesty's Signature, which had reference to the said Commission under the Signet of Scotland, was grounded upon Misinformation, by supposing that the said Commission warranted the Plantation in the Isle of Kent, which (as now appears) it did not: Whereupon, as also upon Consideration of a former Order of this Board, of the 3d of July 1633, wherein it appeared that the Difference, now in Question, being then controverted, the Lord Baltimore was left to the Right of his Patent, and the Petitioners to the Course of Law; their Lordships having resolved and declared, as abovesaid, the Right and Title to the said Isle of Kent, and other Places in Question, to be absolutely belonging to the Lord Baltimore, and that no Plantation, or Trade with the Indians, ought to be within the Precincts of his Patent, without Licence from him, did, therefore, likewise think fit and declare, that no Grant from his Majesty should pass to the said Clayborne, or any others, of the said Isle of Kent, or other Parts or Places within the said Patent, whereof his Majesty's Attorney and Sollicitor General are hereby prayed to take Notice: and, concerning the Violences and Wrongs, by the said Clayborne and the rest complained of in the said Petition to his Majesty, their Lordships did now, also, declare, that they found no Cause at all to relieve them, but do leave both Sides therein to the ordinary Course of Justice. This is spoke to by Mr. Gallibrand and Mr. Paris, also by Dickenson, and is the Exhibit Botra No 4.

Now follows a great Number of Dutch Records, remaining in the Secretary's Office of New-York, authenticated from thence, under the King's Great Seal of that Province; and also their being true Copies, and the Translation of them, proved by two Witnesses in the Cause, viz. Messrs. Noxon and Vanderspiegel. These sort of Records now reach down (without any other sort being intermixed with them) to the 28th of October 1638, which is for 20 Years together.

1638. *May* 6.

A Copy, from a large Dutch Book of Record, being a Protest, whereby William Kieft, Director General of New-Netherland, residing on the Island Manhatans, and in Fort Amsterdam, under the Government of the States General of the United Netherlands, and the West-India Company at the Chamber of Amsterdam, makes known to one Peter Minuit, Commander in the Service of the Queen of Sweden, that the whole South River of New River, has been, many Years, in the Dutch Possession: and above and below settled by Dutch Forts: and also sealed with the Dutchmen's Blood; the which had happened, even during the said Minuit's Direction in the New Netherlands, and was well known to him. Now, because the said Minuit comes between the Dutch Forts, and begins to build a Fort there, to the Damage and Prejudice of the Dutch, which, nevertheless, we the Dutch will never suffer; and we being assured the Queen of Sweden has given you no Orders to build in our Rivers, or along our Coasts: Therefore, in case you proceed in the building Fortifications, manuring of Lands, and trading for Peltry, or attempt any thing to our prejudice, we protest for all damages, Miseries, Bloodsheds and Troubles; and that we will maintain our right, in such a manner, as we shall find most suitable. This is Dutch Records, New-York, No 2, Fol. 4.

1638-9. *Feb.* 3.

A copy from the same Book of Records, of a Judgment given against one Coinclisse, for wounding a Soldier in the Fort, condemning him to serve the Company, along with the Blacks, to be sent by the first Ship to the South River, to serve the Company there, and to pay a Fine to the Fiscal, and Damages to the wounded Soldier. This is Dutch Records, New-York, No. 2, Fol. 5.

1639. *March* 31.

Another Copy, from the same Book, being an Ordinance which recites that many Persons, Companies, and Servants as Setlers, do dare, against the Orders of the States-General and the West India Company, to sell to the Indians, Guns, Powder, and Lead:

therefore every Inhabitant of New Netherland is forbidden the same, on Pain of being punished with Death: Also every one is warned, not to go, with Boats or Vessels, to Fort-Orange, South-River, or Fort-Hope, without a Writing from the Director-General, and on their Return, a Note from the Factors of the said Places, residing there for the Company, on Pain of Forfeiture of the Ships, Vessels, and Cargoes to the Profit of the Company, and of further Forfeitures. Publish'd in Fort-Amsterdam. This is Dutch Records, New-York, No. 2, Fol. 5.

1642. *May 15.*

Another Copy from the same Dutch Book of Records, being an Order or Resolution; taking notice that some English had dared to come into their South River, across over against their Fort Nassau, where they had seated themselves in the Schuikill, without having Commission from any Potentate, being a Matter of ill Consequence, and Disregard of their High Mightinesses, and the Interest of the West-India Company, whereby their Trade, which they have in the South River, is made useless; therefore it's resolved, in the Assembly, to fetch away the English, from the Schuikill, in the properest manner possible. This is Dutch Records, New-York, No. 2, Fo. 6.

May 22.

Another Order from the same Book, for Jan Jansen van Ilpendam, Factor of the West-India Company, how to conform himself, in the South River of New Netherland; namely, to go, with two Sloops, and as many Men as he can procure in the Schuikill, where the English have now lately taken Possession, and demand of the English their Commission, and by what Authority they have dared to take from us our Jurisdiction, Goods, and Commerce, and having no Royal Commission to seat themselves in our Limits, he shall constrain them peaceably to depart, that no Blood be spilt: If they refuse, to secure and bring them on board the Sloops, hither; taking care that He remains Master, and maintains the Reputation of their High Mightinesses and the West-India Company; and after the Departure, or Seising, of the English, to ruin the said Place to the Ground. Done in Our Assembly at Fort Amsterdam, in New Netherland. This is Dutch Records, New-York, No 2, Fo. 6.

1644, *March.*

From the same Book, a Notification, from the Fiscal General of New Netherland, to one Govert Cookermans, that he should not undertake, in the Company's usual Trading place, where the Factor Jan Jansen van Ilpendam uses to trade, in the South River of New Netherland, to trade with the Indians; and, in case he shall do, or has done, to the contrary, then the Fiscal

General protests against him for all Damages the honourable Company shall suffer. This is Dutch Records, New-York, No. 2, Fol. 4.

1646, *July 2*.

From the same Book, a very formal Patent, from William Kieft, Director-General, and the Council, under the Prince of Orange, and the West-India Company residing in New Netherland, granting to Abraham Plack, Simon Root, Jan Andrieson, and Peter Harmens, that they may settle themselves in the South River, and take Possession of the Lands lying therein, almost over-against the little Island called Vogels Sant: of which Land is granted to them 100 Morgen of Land to settle 3 or 4 Plantations: under Condition to acknowledge the Managers before-named for their Lords and Patrons, under the Sovereignty of their High Mightinesses; and to be subject to all such Rates and Duties as are already, or shall be establish'd: and the said Land is further described to be lying on the West-side of the South River. Dated at Fort New Amsterdam, with Promise of further Land, provided they build. Signed by Order of the Director-General and Council of New Netherland, and their Secretary, and sealed with red Wax. This is Dutch Records, New-York, No. 2, Fol. 26.

1647, *Sept. 20*.

From another Dutch Book of Orders and Resolutions, Proposition made by the General, Peter Stuyvesant, to the Board of the Honourable Council. 6. Whether Andries Huddie shall continue in the South River, or who to send thither; because it is highly necessary that a fit Person be continued there? By the Director General and Council it is resolved to continue the said Andries Huddie, for the Service of the West India Company, as Factor in Fort Nassaw, in the South River of New Netherland, and he to have Appointment and Wages, as allowed to other Factors abroad. This is Dutch Records, New York, No 2, Fol. 26.

We have seen what Officer Andries Huddie was, under the Dutch.

1648, *Nov. 17*.

Now follows, from the Dutch Records, a Report, or Representation, made by A. Huddie dated at Fort Nassaw in New Netherland, 17 Nov. 1648, with this Title: A short, yet true, Declaration of the Proceedings of Johan Prints, Governor over the Swedish Troops in the South River of New Netherland, as also the Swedish Settlement in the said River, found in the first of November, 1645. This Piece is long, wherefore we shall

give a short Extract of it. He says, At the coming in of the River, three Miles from the Mouth, upwards, on the Eastern Shore, lyes a Fort, called Elsingburgh, garrisoned with 12, and a Lieutenant, four Cannon of 12 Pounders, and a Potshead, and that that Fort was erected by Johan Prints, and, by that Fort, keeps the River close to himself, and stops all Vessels there, even those of the Honourable Company, going from the Manhatans to their designed Place, even by firing at them, so that they must go up the River, about six Miles, to the said Prints, for Leave to come up higher. Further up, on the Western Shore, in the Mingas Creek, lyes a Fort called Christina, no settled Garrison, but is reasonably provided, and is the Chief Place of the Trade, where the Factor keeps his Residence, and there is the Magazines of all Merchandizes; and this is the first Fort that is built by the Swedes, under the Command of Peter Minuit, in the Year 1638, altho' the Company had sufficient Settlements, in the River, of Fortifications, Men, and Stores of War, and that, above 14 Years before the Swedes had; which Peter Minuit has served the Honourable Company as Director in this Country. Further, on the same Side, about two Miles up, they begin to settle some Plantations, which they continue for about a Mile, but the Houses few and scatter'd, and stretch as far as about the Island Tinnekonk; Where the Governor Prints resides, lyes a pretty strong Fort of Pine Beams, but it was burnt down, 5 December 1645. What relates to the Schuilkill, which are the Honourable Company's purchased and possessed Lands, He has ruin'd the Company's Buildings; and, instead thereof, erected a Fort, about Musket Shot from the Creek; which Creek is the only Place left for Trade with the Mingaes, and, without that Trade, this River is of small Importance. Further, a little beyond this Fort, near Kinsessinge, which has been a Continual Place of Trade for us with the Mingaes; but is now possessed by the Swedes, with a Strong House. Further, about half a Mile, through the Woods, Governor Prints, has erected a Mill, on a Creek that runs into the Sea, a little to the Southward of Matinneconck. And, over the Creek, a Strong House, right upon the Path of the Mingaes. So there is no Place open, to draw in the Mingaes, as he has, in his Hands, the greatest Power of the Trade with the River Indians, who go a hunting, and can't come through, without passing by this Place. The Strength of his People consists in about 80 or 90 Men, at most Freemen, and Servants; wherewith he must garrison all his Places. The Fortifications and Garrisons of the Honourable Company, because they are sufficiently known, (says Andrew Huddie) is here left out. Then, he goes on to report what happened, between himself and the Swedish Governor Prints, on

the 23d of June, 1646, who stopt then a Vessel, Julian Blanck Master, and Cargo, sent to the said Huddie for Trade to the Schuikill, and of the several Debates and Conferences, and Papers, that pass'd thereon: Huddie insisting on the Right of the Dutch, and their West India Company, and Governor Prints insisting on the Right of the Queen of Sweden, and stopping that Ship. Then Huddie proceeds to give an Account that, on 7 Sept. 1646, he having received strict Orders to buy Land of the Indians, on the Western Shore, about a Mile North from Fort Nassaw, he did so and put up the Company's Arms thereon, and took Possession thereof, and several Freemen made ready to build there: But, the Swedish Factor, Huygen, came down, from above, took down the Arms, and committed a great Riot and Disorder there, on the 30th of the same September, and brought down Governor Prints's Protest, declaring it was the Queen of Sweden's own Ground, and Lands, and taking Notice that these secret underhand new Purchases, by the Dutch, shewed how little was to be relyed on of their pretended ancient Right, thentofore talkt of by them. And that Protest was dated at New Gottenburg. The said Huddie also relates his firing at, and endeavoring to stop, a Swedish Vessel, going by Fort Nassaw up the River on the second of April, 1648, and gives a Copy of the Protest which he sent, upon that Occasion, to Governor Prints. He also reports that, as the Swedes had carryed many Pine Beams to the Schuikill, so he, apprehending they meant to build at the Places where the Vessels lye and trade, sent an Account thereof to the Dutch Governor, who sent him Orders that, if the Swedes should come to build, and a new Settle any unsettled Places, he, the said Huddie, should, in the Name of the Company, with all Civility, settle next to him; and having received Accounts that the Swedes had anticipated, and already made some Buildings there, he went thither, and, by the Consent of the Sachems, attempted to build, and Sachems did the Swedes go off, for that they the Swedes had possessed against the Sachems Mind, who had given it to Huddie: and Huddie planted the Prince's Flag, &c., in Token of Possession, and erected the House: but, in the Evening, the Swedish Factor, and seven or eight Men, came and enquired into it: The Indians sayd they had sold it us, and that we should dwell there, and that the Swedes had nothing to do to build there, for that they possessed enough already, in Matinnekonk, the Schuikill, Kinsessingh, Kakaricom, Upland, and other Places, which had been altogether stole from them; Minnit, about 11 Years past, having bought no more than a small Piece at Paghabackinge, to plant some Tobacco, whereof the Natives were to have one half for an Ac-

knowledge, and that the Swedes were now lately first come into the River; but we, the Dutch, had conversed here above 30 Years: so Huddie proceeded in the Work, and set Pallisadoes about the House; but the (Swedish) Lientenant of the Fort in the Schuylkill come, with 24 Men, with Fire-Arms and Matches, and with Axes destroyed the whole Work. That on the 16th of June the principal, and true Owners publickly conveyed the Schuylkill, and renewed the Sale which was formerly made to Arrent Corse, (former Factor there) of the Schuylkill, and the Lands adjoining, whereof two of the Dutch Council took publick and lawful Possession. After that, one Hans Jacobse began to seat himself in the Schuylkill, but was obstructed by the Swedes, commanded by Governor Prints, who burnt what Jacobse was building. So also, one Thomas Broen went to seat himself at Newhooven; but, after three Hours, the Swedish Adjutant came and pulled that down. Afterwards, on 8 September, News came that the Swedes had set up a House before the Fort Beevers Reede, whereby the Approach to that Fort is shut up. And came in the Night, and pulled down the Palisadoes of that Fort, and broke through it, whereupon the said Huddie sent a Protest to the Swedish Governor Prints. And thus ends this Report. And this Exhibit is Dutch Records, New York, No 2, and begins at Fol. 7.

1649. *Apr.* 15.

The Copy of an Original Indian Deed of Sale to the Dutch, of Lands in the South River, whereby Bycheske and Hysiacan declare, in the Presence of several Indian Witnesses, being the Chief of those Quarters, and of the Commonalty there, to sell, in Consideration of a Parcel of Merchandize received in Hand.

A certain Parcel of Land, in the South River of New Netherland, on the East Side of the said River, stretching from the Land called Roophakesky, being over against the Creek of Nejeck Northerly, up, along the River, to the South Corner of an Island called Pincoe Rockanningh, which Place is called by the Natives Mechopinachan, further up the Wyquanaonge, Wysoktchouck, Nepatchtea, Pepiscrikas, are over the Southerly End of the said Island, and further beyond the said Island, unto Necheckeiouw, further up the River, and is called Passanoonoe, Andemoerara, and herein is comprehended the said Island Pincoe Rockanningh, within these Limits and Bounds being, and up in the Country four Miles, or so much more or less as the Possessors shall think fit.

To hold to Andries Huddie, Alexander Boyer, Simon Root, Peter Harmaus, and others. This is Dutch Records, New York, No 2, Fol 27.

1654. *Octob.* 17.

From the same Book of Records, a Protest signed by Hendrick van Deswick, Factor of the General Council of Trade, and Southern Company in Sweden, directed to the general Director and Council of the New Netherland. Complaining that having come into the Fort Amsterdam, with the Ship the Golden Hay, on the 12th of September last, and sent on Shore there for a Pilot, to convey him to the South River, his Ship had been seised and appraised, and he himself and his Men imprisoned, on pretence that the new Swedish Governor, Jan Rising, had caused the Fort Casimir to be taken from them; which was a groundless Pretension, because the Dutch had built that Fort in 1651, on the Queen of Sweden's Ground, by Violence and Force, and against which the late Swedish Governour Johan Prints had then protested; so that the new Swedish Governour Rysing has taken nothing from the Dutch, but only recovered that which belongs to her Swedish Majesty. This is Dutch Record, New-York, No. 2, Fol. 29.

Octob. 27.

A Counter-Protest, from Peter Stúyvesant, the Director General, and the Council of New-Netherlands; offering to restore the Swedish Ship, if their Fort Casimir and the Ammunition, &c., were restored; Complaining of the Swedes treacherously having seized that Fort Casimir. As to Fort Casimir having been built on the Queen of Sweden's Ground, they declare, that that is not, nor cannot be proved; but, ont he contrary, the said Director and Council offer to show, and prove, here in this Country, and not at the Hague or Stockholm, by authentick Writings, and living indifferent Witnesses, Christians and Indians, the States General, and West-India Company's undoubted Right and Property on the Lands in the South River; and that, by Virtue of First Discovery, ancient and first Possession, sealed with their Blood, the erecting of divers Forts heretofore, both on the Eastern and Western Shore, below, above, and in the Centre of the River, as also by legal Purchase, and Conveyance of sundry Tracts, acquired of the true Lords of the Soil, even of that Land on which Fort Cazimir is built; whereon they do not only and absolutely ground their undoubted Right to the whole South River, but on their ancient and first discovery many Years before any other Christian Nation, even the Swedes themselves, who, in 1638, began to anticipate on this South River, &c. Dated at New Amsterdam on New Netherlands. This is Dutch Records, New York, No. 2, Fol. 31.

1655. *Aug.* 31.

From the Dutch Book of Records. A Copy of a Receipt

whereby some Person acknowledges to have received, of Thomas Willeth, 1,500 Guilders in black and white Wampum. With an Entry (under the same) signed by the Director and Council, that the General takes that Wampum with him, on the Expedition to the South River, to make use of the Moneys for the Service of the Company, for paying of Soldiers, or victualling, or making presents to the Natives. Wherefore if any Accident happens, the Company must pay that Money to Willeth. Also another Entry, that the General and Mr. Sille being going to the South River, whereby the Number of the Council will be reduced, two other Persons are to be assumed and added to the remaining Councillors. This is Dutch Records, New York, No. 2, Fol. 28.

1655.

From another Book of Dutch Records, A Commission, from the Dutch Governour Peter Stuyvesant, and the Council at New Amsterdam in the New Netherlands, appointing John Paul Jacques, Vice Director and Chief of the said South River of New Netherland, as also over the Fortresses, Lands, and other Places lying on the said River, and for the Security of the Fort Casimir, and other Places, to keep and establish good Orders, and cause the same to be observed in all matters relating to Trade, Policy, Justice, and Militia, as also over the soldiers, sailors, free Persons, high and subaltern Officers, &c. To command all, for the West-India Company's Service, to administer Right and Justice, as well in Civil as in Military, &c. This is Dutch Records, New York, No. 2, Fol. 41.

1656, *Apr.* 12.

From the like Book, A Grant, from the Director General and Council of the New Netherlands, past at New Amsterdam, granting, unto Thomas Broen, a Plantation lying in the South River, below Fort Casimir. Dutch Records, New-York, No. 2, Fol. 38.

Aug. 25.

Another like Grant unto Jacob Dehinse, of two (Town) Lots, near Fort Casimir, being the 18th and 67th Lots. Dutch Records, New York, No. 2, Fol. 38.

Sept. 1.

Another like Grant, unto Jan Picolet, of Land, in the South River, to the Southward of Fort Casimir, bounded on several other Persons Plantations. Dutch Records, New York, No. 2, Fol. 39.

Sept. 12.

Another like Grant, to Philip Jansen Ringo, of a Lot for a

House and Garden, below Fort Casimir, bounded on another Plantation in the South River. Dutch Records, New York, No. 2, Fol. 39.

Sept. 13.

Another like Grant to Constantine Groenenburgh, of a Lot for a House and Garden, in the South River, below Fort Casimir, being Lot No. 20. and bounded by other Persons Lots. Dutch Records, New York, No. 2, Fol. 39.

Sept. 13.

Another like Grant to Hans Alberts, of a Lot for a House and Garden in the South River, by Fort Casimir, in the second Row, bounded by several other Neighbours. Dutch Records, New York, No. 2, Fol. 40.

Sept. 22.

Another like Grant to Jan Hendrickse, of a Lot for a House and Garden in the South River, by Fort Casimir, being the 35th Lot in the second Row, bounded on several Neighbours. Dutch Records, New York, No. 2, Fol. 40.

Nov. 30.

Another like Grant to Andries Huddie, of a Lot for a House and Garden in the South River, nigh Fort Casimir, being the 15th Lot. Dutch Records, New York, No. 2, Fol. 37.

Nov. 30.

Another like Grant, to Alexander Bowyer, of a Plantation in the South River, to the North of Fort Casimir, bounded by one Neighbour. Dutch Records, New York, No. 2, Fol. 37.

1657. *Apr. 12.*

A Conveyance from the Director and Council of New Netherlands, (in Virtue of Orders received from the West-India Company, bearing Date 19 Dec. 1656,) unto Jacob Alricks, Director and Commissary (under the City of Amsterdam) over their Colony in the South River, the Fortress Casimir, now called New Amstel, with all the Lands thereunto, according to the first Sale of the Natives dated 19 July 1651, beginning on the West-Side of Christina Kill, to the Mouth of the Bay or River called Boonties Hooke, and as far up into the Country, as the Limits of the Minquaes; to hold, to the said Jacob Alricks, to the use of the Burgomasters and Governours of the City of Amsterdam. Dutch Records, New York, No. 2, Fol. 34.

1658. *Apr. 20.*

Peter Stuyvesant, the Governour, lays, before the Council at New Netherlands, several Matters for redress of the Company's Affairs in the South River, that necessary Orders might be set-

tled there, and the Rights of the West-India Company might be taken care of; particularly, in collecting the Customs, for goods inwards and outwards, because there are great Frauds, much Peltry being shipped of, without Entry; and several of the Inhabitants of the Colony of New Amstel petition to settle about the Fortress Altena, within the District of the Company, and to begin Plantations; also, some necessary Orders are wanting, concerning the Swedes. On all which Matters the Council advise Governor Stuyvesant to go thither, himself speedily. Dutch Records, New York, No. 2, Fol. 35.

Octob. 28.

A Commission, from the Director General and Council of the New Netherlands, appointed William Beckman, Factor and Vice Director over the Lands, Forts, standing Forces and Free People on the South River, to keep and make good Orders, Right and Justice amongst them, in Civil and Military, to administer, &c. Dutch Records, New York, No. 2, Fol. 36.

1664. *July 3.*

From the Records in Newcastle County. A Grant from Alexander Hyniossa, Governor of New Amstel, under the Burgomasters of the City of Amsterdam, unto Gerret van Sweeringen, of a Piece of Land, on the South-side of the Fort, in breadth 1600 Rod, and in length 2000 Rod; on Condition to acknowledge the Burgomasters of Amsterdam and the States General for his Lords and Masters, and to obey their Governors and Council there, &c. This is proved to be a true Copy from Newcastle Records, by Messrs. Shaw and Lardner, and is in Newcastle Records, No. 11, Fol. 3.

It's hoped, that all these antient Records from one of the King's own Provinces (New York), will most abundantly prove that the Dutch were possessed from 1629 to 1664, of New York, as their head and chief Settlement, and also of the South River, (which is now Delaware River) as dependant on their great Settlement.

Likewise, that the Swedes, also, had a Possession on the South River and Forts there.

It only remains, (on this Head) to fix the several Places mentioned.

To which purpose, we have an ancient Map, which is a Dutch Map, and has the Dutch Arms upon it, and must have been published whilst they had Possession of the Country, (which Possession they are now going to lose immediately) for it was to no purpose to make Maps of any Country after they had lost it. This Map has no Date to it, nor have Maps usually any Dates to them. But it's intitled *Novi Belgii, Novaque*

Angliæ, Neenon partis Virginie Tabula, multis in locis emendata a Nicolao Joannis Visschero. And this Map is spoke to by Mr. Greene, and is marked *Dut.* and shews abundance of Matters to our Advantage, viz.

1. It shews that Cape Hinloop, Fort Casimir, Fort Christina, Mattinnakonk, and Schuilkill, are all on the West side of Delaware Bay and River (being that Side where the three Lower Countrys now are.)

2. By calling it, still, Fort Casimir, and not New Amstel, it should seem to have been published before 1657; for we see above, that in April 1657, that Place had got its new Name of New Amstel, amongst the Dutch.

Note.

Fort Casimir, New Amstel, and now Newcastle, are all of them the successive Names of the self same Place.

3. This Dutch Map lays down the Line of the 40th Degree (complete) not more than 3 Miles above the Head of Chesopeak Bay. But, above all other Matters,

4. This old Dutch Map, acquits the Plaintiffs of one Imposition which the Defendant would fain charge them with, viz. of putting Cape Hinlopen in his Map too low; he pretending it ought to have been put more Northerly, at the Place where Cape Cornelius was put; for, this old Map (as well as another, which we shall come to in 1671,) lays down both Cape Hinlopen and Cape Cornelius, seperately and distinctly, as two several Capes; and it lays down Cape Hinlopen about 19 Miles more Southerly than Cape Cornelius; and exactly in the self same manner as my Lord Baltimore's own Map of 1732 placed them. So that, indeed, the Plaintiffs did not (in 1732) invent this matter, or impose upon Lord Baltimore therein, as he has most unhand-somly charged upon them, contrary to his own certain Knowledge, nor did the Dutch originally, and in their Maps, call the Place Cape Hinlopen, which in my Lord's Map is called Cape Cronelius. (which is the very Matter put in Issue by my Lord's Answer) but their Maps were, in this respect, most exactly like my Lord's own Map.

CHAP. III. *From the latter End of the Year 1663, when King Charles granted New York, &c., to the Duke of York, and the Dutch were consequently dispossessed of their great and small Settlements, down to the Year 1673; during all which time the Duke of York possessed and governed New York, and thelower Countys also.*

16 Car. II. 1663. Mar. 12.

From the Chapple of the Rolls. Copy of the Grant made to the Duke of York by Letters Patent, of all that Part of the Main Land of New England, beginning at St. Croix, next adjoining to New Scotland in America, and extending, along the Coast, to Pemaquid, and so, up the River thereof, to the furthest Head of the same, as it extended Northwards; and extending, from thence to the River of Kinebequie, and so, upwards, by the shortest Course, to the River Canada, Northwards; and also, all that Island called Mattowacks, or Long Island, lying towards the West of Cape Codd and the Narrohigansetts, abutting upon the Main Land between two Rivers there, severally called Connecticut's and Hudson's River; and the said River called Hudson's River; and all the Land, from the West side of Connecticut River, to the East side of Delaware Bay; and also all those several Islands called Martin Vinyards and Nantukett; Together with all the Lands, Islands, Soils, Rivers, Harbours, Mines, Minerals, Quarries, Woods, Marshes, Waters, Lakes, Fishing, Hunting and Fowling, and all other Royalties, Profits, Commodities and Hereditaments, to the said several Islands, Lands and Premisses belonging and appertaining, with their and every of their Appurts; and all the King's Estate, Right, Title, Interest, Benefit, Advantage, Claim and Demand, of, in or to the same, or any part thereof; To hold to the Duke of York in Fee, to be held of the King, as of the Manor of East Greenwich, in free and common Soccage, and not by Knights Service; rendering 40 Beaver Skins Yearly; with Powers of Government, &c., granted to the Duke of York; and to appoint Governours, Officers and Ministers under him: And an expresse Power (Fol. 4.) to the Duke of York, his Governours and Officers, for their Defence and Safety, to encounter and expulse, by Force of Arms, as well by Sea as by Land, all such Persons as, without their Licence, should attempt to inhabit, within the several Precincts and Limits of his Majesty's said Territories and Islands, &c. This Exhibit is prov'd by Bulmer, and is Rocha No. 4.

Note.

It's pretended that, as this Grant to the Duke of York, when coming from the Eastward, extends only to the East side of Delaware Bay, so, that it did not, by express Words, include the three lower Counties, which are on the West side of that Bay: But, it was a very large and extensive Grant, of several very large Tracts and Territories in America, and past (as we say) all Lands appertaining to those extensive Tracts. And this is the single weak Point in our whole Case.

This Grant was made, in order to drive out the Dutch, and so they immediately did.

1664. *Apr.* 2.

From the Records, in his Majesty's Secretary's Office in New York, an Exemplification and Inspeximus under the Great Seal there, of a Commission from the Duke of York, of this Date, reciting the said Grant to him, and constituting and appointing, Richard Nicholls Esq; his Deputy Governour, within the Lands, Islands and Places aforesaid, and to follow all such Orders and Instructions as he should from time to time receive from the Duke. This Exhibit is also proved to be a true Copy, by two Persons, Noxon and Vandespiegel, and is in New York Records, No. 1, Fol. 3.

Apr. 23.

Copy from the Books at the Board of Trade of Publick Instructions from King Charles the 2d. to Colonel Richard Nichols, Sir Robert Carr, George Cartwright, and Samuel Mavericke Esqrs. his Commissioners, to visit the Colony of the Massachusetts Bay in New Engalnd; the second of those Instructions is (Fol. 5.) to this Effect, viz. You shall, at large, discourse with them, all that we our self have discoursed with you, of reducing the Dutch in or near Long Island, or any where within the Limits of our own Dominion, to an entire Obedience to our Government; and to put them out of Capacity of doing the same Mischief as at Amboyna; and to reduce them to the same Rules and Obedience with our own Subjects there; which you are to let them know is all we aim at, without any purpose of using any other Violence, than is necessary to those Ends; and that no Man shall be disturbed or removed from what he possesses, who will yield Obedience to us, and live in the same Subjection with our other Subjects; and you shall desire Concurrence hereto, from the Massachusetts, and such a Number of Men, and all other things as are necessary thereto; and shall thereupon proceed, in such manner as you shall think fit, either by building of Forts about them, or, by using, such Force as cannot be avoided for

their Reduction, they having no kind of Right to hold what they are in Possession of, in our unquestionable Territories, than, that they are possessed of it, by an invasion of us. And, by another Set of Private Instructions, also given to the said Commissioners, at the same time, they were directed by his Majesty, in his first private Instruction, to acquaint all Men, that a great End of their Design was, the possessing Long Island and reducing that People to an entire Submission and Obedience to the King and his Government, now vested, by his Grant and Commission, in the Duke of York, and by raising Forts, or any other way, to secure that whole Trade to our Subjects, that the Dutch may no longer engross or exercise it, which they have wrongfully possessed themselves of; that whole Territory being in our Possession, before they, as private Persons and without any Authority from their Superiours, and against the Law of Nations, and the Alliance between us and their Superiours, invaded, and have since wrongfully detained the same, to the Prejudice of our Crown and Dignity, and therefore ought in justice, to be resumed by us, unless they entirely submit to our Government; and live as our Subjects, and, in that Case we will take them into our Protection, and they shall enjoy all their Possessions, (Forts only excepted) and the same Freedom in Trade, as our good Subjects. These Copies are proved by Mr. Gellibrand, and are in the Exhibit Botra No. 5.

Apr. 26.

Copy, from the Records in New York, of King Charles' Commission to those 4 Commissioners to visit the several Colonies in New England, and to hear, receive, examine and determine all Complaints and Appeals in all Causes and Matters as well Military, as Criminal and Civil, and proceed, in all things, for the providing for and settling the Security of the said Country, according to the Instructions given, or to be given, to them. This is New York Records, No. 1, Fol. 4.

Now we shall find the Commissioners got to America.

Aug. 15.

A Proclamation, that his Majesty having sent the Commissioners, to expel, or reduce to his Obedience all Foreigners, as have seated them amongst any his Majesty's Dominions in America; all such, of what Nation soever, as will submit to his Majesty's Government shall enjoy their Possessions and Privileges as his Subjects; which the Commissioners publish, to clear themselves from the Charge of those Miseries that may befall such others, as live there and will not acknowledge the King for their Sovereign. New York Records, No. 1, Fol. 5.

Aug. 19.

Peter Stuyvesant, Governor and Commander in chief of the Council of the New Netherlands, writes a Letter from Fort Anill, in New Netherlands (to the Commissioners) sent by several Members of the Council and others, to desire to know the Meaning of an English Man of War arriving in the Bay of the North River of the New Netherlands, about three Days since, and three more arriving there since? New York Records, No. 1, Fol. 6.

Aug. 20

Colonel Richard Nicholls writes an Answer, dated from on Board his Majesty's Ship the Guinea riding before Majek telling the Dutch Governour, that the King's Right and Title to those Parts is unquestionable, and therefore, requires the Surrender of all Forts, Towns and Places of Strength then possessed by the Dutch, and demands the Town upon the Island Manhatoes, with all its Forts to be rendered to him; promising to secure Life and Liberty to those who submit, and those who oppose must expect the miseries of War. And this he sends by Mr. Cartwright, one of the Commissioners, and 3 others. New York Records, No. 1, Fol. 6.

Aug. 22.

Governour Stuyvesant, by a Note, owns the Receipt of the said Demand, and will answer it to Morrow. New York Records, No. 1, Fol. 7.

Aug. 23.

The Dutch Governour Stuyvesant writes a long Answer, dated at Fort Amsterdam: Says, he won't at present Debate the Rights of the King, amongst other things, to Virginia, Maryland, or others in New England; but, that he has a Right to all the Lands in the North Parts of America, is what the Kings of France and Spain will disallow. As also, he the said Governour does, by Virtue of a Commission given to him by the States General, to be Governour General over New Holland, &c., dated 26 July 1646, as also by Vertue of a Grant and Commission from the States General to the West-India Company in the Year 1621, under their Great Seal, now produced to Colonel Nicholls's Deputies. Moreover, it's acknowledged by all the World, that by Vertue of the said Commission and Patent of the States General, the Dutch have peaceably, and without controul, enjoyed Fort Orange, about 48 or 50 Years, the Manhatans about 41 or 42 years, the South River 40 Years, and the fresh Water River about 36 Years. As to delivering up of the Places, the King has so much Equity

that, if he knew the Truth, which is, that the Dutch came not into these Provinces by any Violence, but by Commission from the States General, first of all in the Year 1611, 1615, and 1616, up the North River near Fort Orange, and in the Year 1622, there was a Commission and Grant to the Dutch West-India Company, and moreover, in 1656 a Grant to the Burgomasters of Amsterdam, of the South River, by which Grants they have been held, as also in right of their first Discovery, uninterrupted Possession, and Purchase of the native Princes, and other Persons, the King, (on such Knowledge) would not grant any such Order, to demand their Places; and protesting against this Demand, as an unjust Violence and Breach of the Articles of Peace. New York Records, No. 1, Fol. 7.

Aug. 24.

Colonel Nicholls's Warrant to Captain Hyde, the Commander of the English Squadron, to prosecute, by all ways and means, the speedy reducing the Dutch under his Majesty's Obedience. New York Records, No. 1, Fol. 10.

Aug. 25.

Governour Stuyvesant's Letter from the Manhatoes, in the Fort of Amsterdam, in New Holland, to Colonel Nicholls, that, following the Orders of the States General, he is obliged to defend the Place; but, to prevent spilling Blood, sends Deputies to treat for an Accommodation, and desires, in the mean Time, all Hostilities may cease. New York Records, No. 1, Fol. 10.

Aug. 25.

Colonel Nicholls writes that he insists on his first summons for a speedy Surrender of the Towns and Forts; and will not treat, save upon Articles for a Surrender. New York Records, No. 1, Fol. 11.

Aug. 26.

Governour Stuyvesant and his Council's Commission dated in Fort Amsterdam in New Netherland, in order to prevent the effusion of Blood, plunderings, murders, &c., appointing Deputies to treat. New York Records, No. 1, Fol. 11.

1664. *Aug. 26.*

Colonel Nicholls, Commander in Chief of his Majesty's Forces now beleaguering the Town on the Manhatons, by his written Answer, dated at the Camp before the Manhatans, accepts of the Proposal made by the Governour and Council there, to treat by Articles of Surrender, and appoints Deputies on his part, to treat and conclude upon Articles of Surrender of the aforementioned Place. New York Records, No. 1, Fol. 12.

Aug. 27.

The Articles of the Surrender, whereby the Persons, Properties, Liberties and Customs were to be preserved; and the Soldiers to march out, with their Arms, Drums beating, Colours flying, &c., and Copies of the King's Grant to the Duke of York, and the Duke of York's Commission to Colonel Nicholls, to be delivered to Governor Stuyvesant on Monday next, signed by Colonel Nicholls, Deputy Governour to the Duke of York; and within two Hours after that, the Fort and Town called New Amsterdam, upon the Isle of Manhatoes shall be delivered into the Hands of Colonel Nicholls. New York Records, No. 1. Fol. 12.

Aug. 29.

Governour Stuyvesant's Ratification of the said Treaty. New York Records, No 1. Fol. 16.

Thus the Dutch great Settlement was reduced at what is now New York. And after that was done, the English proceeded next, to the small Settlement, viz.

Sept. 3.

Colonel Nicholls and Mr. Cartwright, and Mr. Mavericke's Commission, dated at the Fort in New York, upon the Isle of Manhatans, reciting, that the Dutch have seated themselves at Delaware Bay, and drawn a great Trade thither; which, if they be permitted to go on, the gaining of this Place will be of small Advantage to his Majesty; wherefore having determined to bring that Place, and all Strangers thereabout, to his Majesty's Obedience; the Commissioners appoint two of his Majesty's Frigates, and all the Soldiers which are not in the Fort, to go thither, under the Command of Sir Robert Carr, to reduce the same. And all Officers at Sea and Land are to obey Sir Robert Carr during this Expedition. New York Records, No. 1, Fol. 12.

Instructions to Sir Robert Carr for reducing of Delaware Bay, and settling the People there under his Majesty's Obedience; When you come near the Fort, which is possessed by the Dutch, send your Boat ashore, to summon the Governor and Inhabitants; and let them know they shall enjoy their Houses, Goods and Privileges, only, they must change their Masters, whether they be the West India Company, or the City of Amsterdam. To the Swedes, remonstrate their happy Return, under a Monarchical Government. The Cannon and Ammunition, which belongs to the Government, shall remain to his Majesty. The Acts of Parliament shall be the Rule of future Trading in Liberty of Conscience to the People. If you can't reduce the Place by Force, send a Messenger to the Governor of Maryland, with

this Letter to him, and request his Assistance, and of all other English, who live near the Dutch Plantations. "To my Lord "Batimore's Son, You shall be lare, and to all the English "concerned in Maryland, that his Majesty hath, at his great "Expence, sent his Ships and Soldiers to reduce all Foreigners "in those Parts to his Majesty's Obedience: and, to that Purpose, "only, You are employed; But, the Reduction of the Place "being at his Majesty's Expence, you have Commands to keep "Possession thereof, for his Majesty's own Behoof and Right, "and that you are ready to join, with the Governor of Maryland, "upon his Majesty's Interest, in all Occasions; and that, if my "Lord Baltimore doth pretend right thereunto, by his Patent, "(which is a doubtful Case) you are to say that you only keep "Possession, till his Majesty is informed and satisfied otherwise." This Piece is not dated, nor signed by any one, but is in New York Records, No. 1, Fol. 15.

Oct. 1.

Articles of Agreement between Sir Robert Carr, on the Behalf of his Majesty, and the Burgomasters, on the Behalf of themselves, and all the Dutch, and Swedes, inhabiting in Delaware Bay and Delaware River. The Burghers and Planters to submit to his Majesty's Authority, without making any Resistance, to be protected in their Estates, the Magistrates to be continued, any Dutchman or other may depart, the Magistrates and all the Inhabitants to take the Oaths of Allegiance to his Majesty, and of Fidelity to the present Government, the People to enjoy Liberty of Conscience, and whoever takes the Oaths to be, from that Time a free Denisen. New York Records, No. 1, Fol. 16.

Now the English having gained from the Dutch, both their great Settlement at New York, and their small Settlement at Delaware Bay and River, we shall have abundant Proof, of the small Settlement being governed, granted out, ruled and ordered, by the Duke of York's Governors at New York, in numberless Instances, as a Part and Appurtenance of that great Settlement at New York.

Oct. 24.

The King's Commissioners sign a Warrant, dated at New York, on Manhatans Island, appointing Colonel Nicholls to repair to Delaware Bay, and there to take special Care for the good Government of the said Place, and to depute such Officers therein, as he shall think fit, for the Management of his Majesty's Affairs, Civil and Military. New York Records, No. 1, Fol. 17.

Oct. 26.

Governor Nicholls signed four Papers, at Fort James in New York, on Manhatans Island, this Day. By the first he gave a Licence to Elizabeth Cousturier, to transport herself and Goods to Delaware Bay, and there to trade or traffick with the same. By the second, he certified that Captain Hyde, of his Majesty's Ship the Guinea, had delivered a Flag for his Majesty's Service in the Fort of New York, and another Flag, and Sea Compass, to Sir Robert Carr at Delaware Bay. By the third, he certified that Captain Hyde having worn a Jack Flag, at his Main Top Mast head, in those Parts, was, by the Advice and Allowance of the King's Commissioners. And, by the fourth, he certified that the said Captain Hyde had spared two Barrels of Power, and 20 Iron Shot, which were spent at the reducing of the Fort at Delaware aforesaid under his Majesty's Obedience. New York Records, No. 1, Fol. 17. 18.

The same Day.

The said Commissioners signed an Order, dated at James Fort in New York, on Manhatans Island, to Captain Hyde, Commander of his Majesty's Ship the Guinea, to sail directly for Portsmouth, giving his Royal Highness Notice of his Arrival. New York Records, No. 1, Fol. 18.

1665. *June 12.*

Governor Nicholls issues out an Order, dated at Fort James in New York, whereby, in Virtue of the King's Grant to the Duke of York, he revokes the Form and Ceremony of Government of that his Majesty's Town of New York, under the Name of Scout, Burgomasters, and Chepens; and for the future Administration of Justice by the Laws established in these the Territories of his Royal Highness by Persons to be appointed Mayor, Aldermen and Sheriffs, according to the Custom of England in other his Majesty's Corporations. New York Records, No. 1, Fol. 19.

July 5.

Governor Nicholls, at Fort James in New York, grants a Licence of Alienation to Jacob Vis, to sell his real Estate, consisting of a House and Garden, at, or near Newcastle in Delaware Bay, to any Person living within this Government. New York Records, No. 1, Fol. 20.

Nor. 11.

Governor Nicholls, by his Licence, dated at Fort James in New York, grants Leave to Peter Alricks to trade, or traffick with the Indians, in and about Hoarekills, in Delaware Bay, for Skins, Peltry, or other Commodities; the said Alricks making

due Entry with the Officers at Delaware, of the Quantity or Quality of such Commodities as he shall trade for. New York Records, No. 1, Fol. 20.

The same Day.

Governor Nicholls, by his Pass, dated at Fort James in New York, permits the said Alrick, with his Servant and six Horses, to pass from New York to Delaware, and, from thence, into Maryland, and so to return about his Occasions. New York Records, No. 1, Fol. 20.

1666. *Mar. 20.*

Governor Nicholls, by an Order, under his Hand and Seal, dated in Fort James at New York, and directed to the Collector and Receiver General of the Customs at New York, (and it is there said, that another was sent to Delaware) takes notice of the Necessity of granting some temporary Privileges for Encouragement of Trade between the Port of New York and Delaware River; and that, the Tenths of all Sorts of Goods, Liquors, Peltry, &c., by former Practice and Order, had been collected and paid, in or at the aforesaid Port and River; now, he orders, that (until contrary Order shall be published) no Sort of Goods, Liquors, or Peltry, shall be liable to pay any Custom, either in this Port, or in Delaware River, provided that due Entry and Certificate be made and given of all such Goods, Liquors, or Peltry, which shall be transported to or from this Port, and Delaware River. New York Records, No 1, Fol. 21.

1667. *July 21.*

A Copy which was reprinted by the King's Printer, and by his Majesty's special Command, so long ago as 1685, of the Articles of Peace and Alliance between King Charles the Second, and the States General, at Breda. By the third Article whereof, (Fol. 56.) It was agreed, "That both the Parties, and "either of them, shall keep and possess hereafter, with plenary "Right of Sovereignty, Propriety, and Possession, all such "Lands, Islands, Cities, Ports, Places and Colonies, (how many "soever) as, during this War, or in any former Times before "this War, they have, by Force of Arms, or any other way "whatsoever, gotten and detained from the other Party; and "that, altogether after the same manner as they had gotten, and "did possess them the 10-20 Day of May last past; none of the "same Places being exempted." Printed Book of Treaties, Fol. 55, 56.

Certificate from the King's Prothonotary in Chancery, that he cannot find any Inrollment of that Treaty, or any Original, or other Transcript, or Memorial, of it. Paper Certificate.

Note, It is indeed lost, and was never inrolled, great En-

deavours having been used to find it, at every publick Office, but in vain, as is proved by Paris.

In 1664, the Crown had conquered from the Dutch both their Settlements, and had, since, possessed the same; but now the Dutch, as we see, added a Cession of the same. After which, we shall find the Instances, of what we are proving, much stronger, and more frequent, than before.

Jan. 8.

From the Records in New York. Governor Nicholls's Grant of Confirmation unto Johan Hendricks, Niels Nielson Sen. Hendrick Nielson, Mattys Nielson, and Niels Nielson Jun. their Heirs and Assigns for ever, for a Plantation, to each of them, at Newcastle, viz. scituate on the Verdrietige Hook, or Corner of Land, so extending to the Stone Hook, which had been before granted to them the fifth of March, 1663, and the 15th of June, 1664. Five Bushels of Wheat Acknowledgment. New York Records, No 3, Fol. 3.

The same Day.

From the Records in New York. Governor Nicholls's Grant of Confirmation unto Captain John Carr, of a Piece of Land with a Plantation thereon, containing 50 Acres, and another contiguous Piece of Land and Bowery thereon, containing 100 Acres both scituated at Newcastle upon Delaware, upon the first Hook or Corner of Land, above the Fort, on the North East Side thereof, and mentioned to be bounded by three other Persons Lands, which Lands, &c., had been purchased from the Owners by Anthony Bryant, and by him since sold for a valuable Consideration to the said Captain John Carr; and, for a Confirmation to him of his Possession and Enjoyment, this Patent is granted. Two Bushels of Wheat Acknowledgment. New York Records, No 3, Fol. 3.

1668. *Mar. 25.*

Now Francis Lovelace Esq; appears to be Governor; but his Commission does not appear. From the Records in New York. Francis Lovelace's Grant of Confirmation to Hans Block, for a piece of Land at Delaware, upon the second Hook, or Neck, above the Town of Newcastle, and some Meadow Land, containing together, 120 Acres, bounded by four Neighbours Lands. The Quit Rent two Bushels. New York Records, No. 3, Fol. 4.

April 21.

From the Records in New York. Regulations and Directions for the Settlement of the Government in Delaware, dated at Fort James in New York. It is necessary to hold up the

name and Countenance of a Garrison in Delaware, with 20 Men. and a Commission Officer. That the Soldiers be lodged in the Fort, and keep the Stockadoes up in Defence. That the Civil Government be continued, till further Order. If any Complaints shall be made of the Civil Magistrates, the Commission Officer, Captain Carr, is to call to him five Persons, therein named, as a Council, to determine the same. They also are to advise him, in all Difficulties with the Indians, and for the arming the several Plantations and Planters, who must obey their Orders. Two Thirds of the Soldiers to remain, constantly, in and about Newcastle. Fines for light Offences to be moderate. The Commission Officer, Captain Carr, in the Determination of the chief Civil Affairs, whereunto the fore mentioned Counsellors are ordained, to have Casting Voice. The new appointed Counsellors; to take the Oath to his Royal Highness. The Laws of the Government, established by his Royal Highness, to be frequently communicated to the Counsellors and others. No offensive War to be made, against any Indians, before you receive Directions from the Governor for so doing. In all Matters of Difficulty and Importance, You must have Recourse, by way of Appeal, to the Governor and Council at New York. New York Records, No 17. Fol. 22.

June 8.

From the Records at New York. A Letter, writ from Governor Nicholls and Colonel Lovelace jointly, and dated at Fort James, directed to Captain Carr. Since our last, relating to the Indians, who murdered the Servants of Mr. Tom and Peter Alricks, one Rambo informs us that the Indians, in those Parts, desire there should be an absolute Prohibition, upon the whole River, of selling strong Liquors to the Indians: Therefore, you are to convene those Persons, who are joined with you in Commission, for the Management of the Civil Affairs; and, with their Advice, give all necessary Orders for the good Government of Christians and Indians, and, what you conclude, must be remitted hither, and shall be confirmed, as if we had been present. New York Records, No. 1, Fol. 23.

July 7.

From the Records at New York, dated at Fort James in New York, on Manhatans Island, A Certificate, that, at the taking of the Fort and Town at Delaware, from the Dutch and reducing of those Parts under his Majesty's Obedience, all the Goods and Servants, taken or seized upon in the said Fort or Town, belonging to the City of Amsterdam, or their Officers, were confiscated, and made free Plunder, and so disposed of accordingly; and there being several Negroes taken away from Peter

Alricks, who fell into the Hands of Ensign Arthur Steck, he, afterwards, freely restored and bestowed 11 Negroes upon the said Alricks, as a Gift, which was allowed, and approved of by me the Certifier. New York Records, No. 1, Fol. 23.

Aug. 27.

From the Records at New York. A Certificate, dated at Fort James in New York, that Mr. William Tom came over, with the Certifyer, in his Majesty's Service and had ever since been in Office, and for two Years last past Commissary at Delaware, and having behaved well, and desired his Discharge, it is hereby granted to him. New York Records, No 1, Fol. 24.

Nor. 17.

From the Records at New York. An Order, under Hand and Seal, dated at Fort James in New York, directed to Captain John Carr, at Newcastle upon Delaware. Reciting, that Sir Robert Carr had received a Mare, at Delaware, which he promised to pay Samuel Edsal for here; but not having paid the same, as was also represented to the late Governor, Colonel Nicholls; therefore, authorising Captain Carr, with the Magistrates in Commission at Delaware, to make Enquiry of the Value of the said Mare, and to cause the same to be paid to Edsal, out of the Estate in those Parts belonging to the said Robert Carr. And for so doing this shall be a sufficient Warrant. New York Records, No 1, Fol. 24.

Dec. 15.

From the Records at New York. An Order, dated in Fort James there, reciting, that an Agreement had been made, with Peter Alricks, about Mattinicom, alias Carr's Island, in Delaware River, and all the Stock, Goods, and other Materials thereon, heretofore, in your Care and Custody; Therefore, requiring immediately to make a Surrender of the said Island, and Stock, and Goods, to Alricks, or his Assigns, and return me a true Inventory, and Account of all the Stock and Goods, which was delivered you there by Sir Robert Carr. New York Records, No 1, Fol. 24.

Mar. 23.

From the Records at New York, a Confirmatory Licence of Alienation, there dated, (by Governor Lovelace) to confirm a Licence, granted by the late Governor, Colonel Richard Nicholls, his Predecessor, unto William Beckman, to sell a House, and Lot of Ground at Delaware. New York Records, No. 3, Fol. 5.

Mar. 24.

From the Records at New York, a Confirmatory Grant, made

by Governor Lovelace, unto Jurien Jans, for a piece of Land at Delaware, upon —— Hook, or Neck, above the Town of Newcastle, bounded by one Neighbour, and containing 46 Acres. The Quit Rent, one Bushel of Winter Wheat. New York Records, No. 3, Fol. 5.

1669. *Mar. 25.*

From the Records at New York. Governor Lovelace's Confirmatory Grant, to Jacob Vander Weer, of a small Island, at Delaware, lying beyond Christeen Kill, bounded upon the Main by two other Neighbours. Quit Rent, two Bushels of Wheat. New-York Records, No 3. Fol. 5.

Same Day.

Governor Lovelace's like Confirmatory Grant, to Gerrit Sandersen of two Pieces of Land at Delaware, bounded by four Neighbours, named. New-York Records, No 3. Fol. 5.

Mar. 26.

Three more Confirmatory Grants, from Governor Lovelace. 1. To John Sibrantse, of a Piece of Land, at Delaware, near the Horse Neck, called the Paerd Hook, bounded on one Neighbour. Quit Rent, one Bushel. 2. To Evert Gertson, of a Piece of Land, at Delaware, viz. in Newcastle, between Otter Street, and Calves Street, bounded on each Side by one Neighbour. Quit Rent, one Bushel. 3. To Paul Jaques, of 200 Acres of unmanured Land, along Christeen Kill, bounded by two Neighbours. Quit Rent, two Bushels. New-York Records, No 3. Fol. 6.

April 8.

Two more Confirmatory Grants, from Governor Lovelace. 1. To Harman Reyners, of a Lot of Ground, at Newcastle in Delaware, with a House and Garden thereon, bounded by one Neighbour. Quit Rent, one Bushel. 2. To Neils Lawes, of a Piece of Land, at Delaware, near Upland, containing 150 Acres, bounded by one Neighbour. Quit Rent, one Bushel and a-half. New-York Records, No 3. Fol. 7.

May 28.

Governor Lovelace's Confirmatory Grant, to Olla Towson, of a Parcel of Land at Delaware, bounded by two Neighbours. Quit Rent, one Bushel. New-York Records, No 3. Fol. 7.

Same Day.

Two more Confirmatory Grants, from Governor Lovelace. 1. To Bernard Eken, of a House and Garden, in the Town of Newcastle, bounded West with the Church Yard, and North with the Mart. Quit Rent, one Bushel. 2. To Bernard Eken, of a

Plantation, at Delaware, near Horse Neck, or Paerd Hook, and called Laymakers Hook, Quit Rent, one Bushel. New-York Records, No. 1. Fol. 25.

July 1.

Another Confirmatory Grant, from Governor Lovelace, to Simon Jansen and Mattys Berkelse, for a Parcel of Land, at Delaware, upon the Crane Hook, bounded by one Neighbour. New-York Records, No 1. Fol. 25.

July 1.

A General Order, dated at Fort James in New-York, Reciting, that there was an Order, made at the General Court of Assizes in 1666, that all Persons, who had old Patents, should bring them to be renewed, and those who had none should be supplied therewith by a certain Time; which Order extended itself to Albany, Esopus, and all other Places of the Government, as well as this City; and, more particularly, to all those, who had been under the Dutch, and are now reduced to his Majesty's Obedience: these Presents declare, that the Inhabitants in and about Delaware, being under this Government, are likewise concerned, as well as the rest, so that all Persons there, who hold their Lands by Patents, or Ground Briefs, of the Dutch Tenures, are to have their Patents renewed, and those who have none, are, with all Speed, to be supplied therewith, otherwise they are liable to incur the Penalty of the Law. New York Records, No 1. Fol. 25.

July 29.

Two Confirmatory Grants, from Governor Lovelace 1. To William Tom, of a Piece of Land, below the Town (of Newcastle) heretofore belonging to Peter Alrick, and another Piece of land and Meadow. Quit Rent, two Bushels. 2. To William Tom, of a House and Lot, at Newcastle. Quit Rent, one Bushel. New-York Records, No 1. Fol. 26.

Aug. 2.

An Order, dated at New York, permitting William Tom to take up, kill, or mark wild Hogs, in the Woods, at Delaware, near his Lands. New-York Records, No 1. Fol. 26.

Same Day.

Another Order, dated at Fort James in New York, directed to the Officers at Delaware, reciting, that there is a Swede, at Delaware, pretending to be Son to Conismark, one of the King of Sweden's Generals, who raises Sedition, and disturbs the Peace and Laws of the Government; and Henry Coleman, one of the Fins, (Finlanders) leaves his Habitation, Cattle, and Corn, and runs after the other Person; and they converse with

the Indians; and Mischief being apprehended from them you have, already, according to your Duty, set forth your Warrant to apprehend him, but he can't be met withal. I therefore empower you to set forth a Proclamation, in my Name, that if Coleman does not surrender himself in 15 Days, you cause all his Estate, within this Government, to be seised upon, and secured to his Majesty's Use; of which you are to render me an Account, by the first Opportunity. New-York Records, No. 1. Fol. 27.

Same Day.

The Governor's Order, dated at New York, upon William Tom's Request, that the Finnes, or others, residing at, or about Delaware, may have an Enlargement of their Bounds; they desiring to take up some Lands at Apoquimini, within the Government, as an Encouragement to them, the Governor grants their Request, on Condition a Draught of the Land be taken, and returned to him, whereupon, those who settle there shall have Patents. New York Records, No. 1, Fol. 27.

Same Day.

The Governor's other Order, dated at New York, upon William Tom's Request, that some Familys from Maryland may have liberty to come and settle, upon the Kill, below Apoquimini, within the Government; to the end the said Place may be inhabited and manured, it tending likewise to increase the Inhabitants within these Territories, I grant the said Request, on condition a Draught be taken of the Land in the said Kill, and a Return thereof made to me, whereupon those who settle there shall have Patents for their further Assurance. New York Records, No 1. Fol. 27.

Same Day.

The Governor's Order, dated at New York, empowering William Tom to collect the Quit Rent, upon all Persons relating to Delaware, or Delaware River, who have taken out Patents and hold their Lands under his Majesty's Obedience, and also, to collect from those who have no Patents, and hold Lands, there at least proportionable with the rest. For the taking out of whose Patents there is Notice of another Order. New York Records, No 1. Fol. 28.

Aug. 3 and 6.

Two several Orders, from the Governor, directed to Captain Carr, and the rest of the Court at Newcastle, one Outhouse's Goods having been attacht, at the Suit of Teller, in the City of New York, but permitted to be transported to Delaware, on condition to be deposited, till the Debt was paid; but the Court

having, contrary to the Governor's Orders, released the Goods, and given longer time for Payment, the Governour requires the Court to secure all Charges and Interest out of the Debter's Estate, which, if they cannot do, the Court themselves are to make good. New York Records, No 1. Fol. 29.

Sept. 1.

A Grant from Governor Lovelace, unto Charles Floyd and John Henry, two Soldiers who went over in his Majesty's Service, of 20 Acres of Land, behind the Town of Newcastle, which had belonged to one Webber under the Dutch Government, and had been seized upon and confiscated by Order of the late Governor. Quit-Rent, 1 Bushel. New York Records, No. 1. Fol. 30.

Sept. 14.

From the Records of New-York. Minutes of the Governor and Council, on Receipt of Letters from Captain Carr, that an Insurrection was very much feared there, the chief Actor being in hold, and the Depositions of several Persons taken; Ordered a Letter of Thanks to the Officers there, for their great Care, and that the long Finne, in hold and in Irons, be still kept in safe Custody, till the Governor, or some other commissioned from him, shall go over to examine into and try the Matter of Fact, which is of so heinous and high a Nature; and that all Persons who have had a hand in the Plot, be bound over and enjoined to give Security to answer their Misdemeanour, and an Account to be taken of their Estates, in the mean time. New-York Records, No 1. Fol. 30.

Sept. 15.

Being the next Day, the Governor writes a Letter, from Fort James in New-York, to Captain Carr and the Scout and Commissaries at Delaware, thanks 'em for their good Service herein to his Royal Highness, in securing those Men, and promises to represent that Matter to the Duke. Orders him to keep the long Swede in Irons, till he can have his Trial, which shall be as speedy, as the Governor's Affairs can permit, either by the Governour's own Presence, or by some of the Council sufficiently authorised to hear and determine that Affair. I think it would not be amiss if, to the simpler Sort of those concerned, you injoin them to labour sometimes in the Reparation of the works about the Fort. New-York Records, No 1. Fol. 31.

Oct. 18.

Minutes of the Governor and Council of New-York, on consideration of the long Finne's Insurrection at Delaware, it is adjudged, that he deserves to die for the same; yet in regard

many others were concerned with him, and, amongst them, some simple People, who might be involved in the same, if the Rigor should be extended, it's thought fit and order'd, that the said long Finne shall be publickly and severly whipt, and branded in the Face with R, for attempting Rebellion: After which, that he be secured, till he can be sent and sold to the Barbados; That the Chief of his Accomplices do forfeit to the King half their Goods and Chattels, and a smaller Fine be set on the rest; which shall be left to the Discretion of the Commissioners who shall be appointed to make Enquiry into the same. As to the Indian, who committed a Rape on a Woman there, that he be put to Death, according to the Sentence past on him there. New-York Records, No 1. Fol. 32.

Next Day.

Governor Lovelace's Letter to Captain Carr. Approves of the Sentence of Death which the said Captain Carr and the Commissioners had condemned the Indian to; and, he being escaped, orders them to send to the Sachem, that he may be delivered up, and Justice executed on him. As to the long Finne, keep him a little longer, till I send some Commissioners from hence to examine into the whole Matter; but I would not have the ordinary People be too much frightened, I have thought fit to excuse them, by a pecuniary Mulet, as they shall appear more or less guilty. New-York Records, No 1. Fol. 32.

Nor. 22.

The Form of a Commissions, from the Governor of New-York, to several Persons (for whose Names there is a Blank) whereof Matthias Niccols to be President, to put in Execution the Regulations, and Act of Council made relating to the long Finne; Also to call any other Persons that were in hold, before them, and pronounce sentence against them, according to the Directions therewith given to the Commissioners; and to examine all others, suspected to be guilty, and impose Fines according to their Demerits. New-York Records, No. 1. Fol. 33.

Jan. 25.

Minutes of the Governor and Council. The Sentence against the long Finne being taken into Consideration, order'd, that two Warrants be prepared, the one to Mr. Cousseau to receive, the other to Captain Manning the Sheriff, to deliver the said Finne, according to the Sentence. Also the Matter about William Douglas taken into Consideration. The Letter from the Whorekill read, ordered that, according to their desire, and an Order of the special Court held at Newcastle, there be an Officer appointed amongst them, to keep the Peace, &c. and a Commission sent to that purpose; And, as Douglas has behaved

so ill, at the Whorekill, he shall be continued in Prison till further Order, but his Irons to be taken off; but if he can give Security not to return to the Whorekill, &c. he may be discharged. New-York Records No 1. Fol. 33.

Jan. 26 and 28.

An Entry that the long Finne was, that Day, put on Board Mr. Cosseau's Ship, to be transported and sold at Barbados, according to the Sentence of the Court at Delaware; And a Warrant (to the Captain of the Ship) dated at Fort-James in New-York, to carry him to Barbados, and sell him there, as Servants were sold, and to return the Produce to that Port of New York. New-York Records, No 1. Fol. 34.

Feb. 25 and 26.

An Entry that William Douglas was, that Day, released from Prison in the State-house, where he had been committed for a Misdemeanor at the Hoarkill, and was sent into the North, having given Bond not to return into this Government; And the Governor's Letter (to the Magistrates) approving of their having sent him Prisoner to Delaware, from whence he had been remitted to New-York, approving what they had done, and acquainting how he was now sent away. And, to prevent future Disturbances, the Governor sends a Commission, empowering some of them to suppress them. New-York Records, No 1. Fol. 34.

Feb. 28.

A short Entry (which is sworn to be a true Copy of the Record) that, this Day, there was a Commission, under the Governour's Hand and Seal, sent to the Hoarekill, for certain Persons, there named, to be Scout and Commissaries, to keep good Orders there for his Royal Highness, to try all Matters of Difference under 10l. amongst themselves; for what shall be above, they are to apply themselves to New-York: and so, for all Criminals. New-York Records No. 1. Fol. 35.

Mar. 15.

An Order of the Governor, renews the former Custom and Duty of 10 per Cent. on all European Goods imported at the Hoarekill, and 10 per Cent. on all Furrs and Peltry exported from thence: and appoints Martin Crieger to be Receiver and Collector of the Customs at the Hoarekill, to receive those Duties, according to former Custom and Usage; and all Persons are to obey this Commission under Penalty of Confiscation of their Goods. And the said Crieger is to render the Governor a due and exact Account of the said Duties. New-York Records No 1. Fol. 35.

1670, *April 13.*

The Governor's Letter from New-York, to Captain Carr, that he has given Jacobus Fabritius and his Wife, his Pass to go to Newcastle, or any Place in Delaware River. . And recommends to him a Suit that Fabritius's Wife has there, the Governour thinking it just that an old Execution, in that Suit, should be of Force, or renewed. New-York Records, No 1. Fol. 35.

May 16.

The Governor's Order made at New-York, on the Petition of Niels Nielson, and the others, concerned in the Patent granted by Colonel Nicolls, for each of them to have a Plantation, on Verdrietiges, or Trinity-Hook, at Delaware; they complain that William Tom, having, by Misrepresentation, obtained a Patent for the said Land, has, by Order of the Court at Delaware, forbid them to cut Hay, or feed the Marsh; which, without Relief, will be much to their Prejudice. Now, the Governour orders, that the said Petitioners shall enjoy what is granted in their Patent, any Patent, Grant, or Order of Court, in favour of William Tom, to the contrary notwithstanding. New-York Records, No 1. Fol. 36.

Aug 24.

The Governor's Letter, dated from Fort James, directed to Captain Carr, on account of a new Murder committed by the Indians, blaming the Magistrates at Newcastle for their too much Remissness, in not avenging the last Murder; ordering a narrow Enquiry into this late Action; to strengthen themselves in their Garrison; recruit their Men; muster the Burghers; dispose them to their Watches; summon the Commissioners; with them consult the best way to discover the Assassins; demand them, or force the Indians to deliver them up, that they may be brought to Punishment; and on all occasions, to give the Governour Advisements of their Proceedings, that He may apply a timely Assistance, if need require. New York Records, No 1. Fol. 36.

Oct. 22.

Minutes of the Governor and Council, that the Customs at the Whorekill should be abolished. New-York Records, No 1. Fol. 37.

Same Day.

The Governor's Abolition, under the Seal of New-York, done with the Advice of his Council, of the Customs lately laid at the Whorekills, and this, on the Request of the Inhabitants there, provided they don't sell too great Quantities of Liquors

to the Indians, nor prejudice their Neighbours of Newcastle, upon which Place they are to have their Dependance. New York Records, No 1. Fol. 37.

Same Day.

A Licence granted to Peter Gronendike, to trade with the Indians at the Whorekill. New-York Records, No 1. Fol. 37.

Nov. 7.

The Governor's Licence to Peter Alricks, to take up a Pair of Mill-stones at the Whorekill, belonging to no Person there. New-York Records, No 1. Fol. 37.

Nor. 16.

The Governor's Letter from New-York to Captain Carr, now it's Winter, and safe against the Indians Attempts, to disband some of his Men, contract his Expence, and take them on again in the Spring, and to let the Governour know if shall want any Force from New York. New-York Records, No 1. Fol. 38.

1670. Jan. 9.

The said Governor Colonel Lovelace's Commission, dated at New-York, appointing James Mills Surveyor of Land at the Whorekill and Parts adjacent, he behaving according to the Custom and Practice of Surveyors in these his Royal Highness's Territorys. New York Records, No 1. Fol. 38.

Jan. 12.

The Governor's Licence, dated at New-York, to William Mills, to purchase a Piece of Land for a Plantation, to the Southward of the Town at the Whorekill, but the Extent and Quality thereof is to be certified to me, whereupon he shall have further Assurance by Patent. New-York Records, No 1. Fol. 38.

Feb. 24.

Minutes of the Governor and Council at Fort James, on the Result of the Affair with the Indians, which Affair is respited till Capt. Carr's Arrival; and a Letter, to that effect, writ by Governor Lovelace to the Inhabitants of Delaware. New-York Records, No 1. Fol. 39.

Mar. 17.

In t^ections given, by Governor Lovelace, to Capt. Crieger, who was bound to the Whorekills, viz. To bring the Governor an Account of the Encrease or Decrease of the Inhabitants there, whether any new Families are resolved to settle here under the Protection of his Royal Highness, and to give the Governor an Account what the Civil Officers are, whether the scout is to be altered this year, the Person to succeed him is to be recommended to the Governor, who will authorize him for two

Years, to enquire about the Indians who murdered John de Caper's People, and let the Governor know under whose Jurisdiction they live, to bring the Milstones with him, to remove the Customs, and restore them to their ancient Liberty. New-York Records No 1. Fol. 39.

1671. *Apr.* 15.

Minutes of the Governour and Council of New-York. Delaware Business taken into Consideration (Capt. Carr being present) about the Murder committed by the Indians, about selling strong Drink to the Indians. About the Murderers, they are known, but, for the present, not thought convenient to prosecute to the utmost. Capt. Carr relates of the Desire of many Familys to come and settle below Newcastle, at Apokimini and Bombay's Hook, to be considered of; a Letter is ordered to be written to treat with some of them about their Settlement. New-York Records, No 1. Fol. 39.

Apr. 25.

A special Writ, dated at Fort James in New York, in an Action of Debt, brought by Peter Jago against Cornelius Joris now residing at Newcastle in Delaware, commanding the said Joris to appear at the General Court of Assize to be held in the City of New-York the 6th of October next to answer the Complaint of the said Plaintiff in an Action of Debt. This Writ is directed to any of the Officers at Delaware, or in Delaware River, who are to see this special Warrant served, and to make Return thereof to the Court above mentioned, and also to cause any Attachment, laid upon the Goods of the Plaintiff by the Defendant, to be rebact, until the Trial at the Assizes. New York Records, No 1. Fol. 40.

May 1.

From the Records in Newcastle County, Governor Lovelace's Grant, at full Length, which he makes, as Governor General under the Duke of York, unto Herman Rayners in Fee, of a Lott of Land at Newcastle in Delaware River, bounded by the Mart, and by Beaver Street, and by two Tenants. Newcastle Records, No 11. Fol. 4.

May 18.

From the New-York Records, Minutes of the Governor and Council. Capt. Criege's Business about the Whorekill. The Purchase of the Whorekill, by the Dutch, to be recorded. An Examination made at the Whorekill by Capt Criege, and the Answer upon it, together with three Papers brought by Capt. Carr concerning it. The other Matters from the Whorekill well approved of. New-York Records, No 1. Fol. 40.

June 14

Minutes of the Governor and Council at New-York. The Business under Consideration are the Matters at Newcastle and the Whorekill. About Newcastle it was ordered that no Person in Delaware be permitted to distill there, but such as give in their Names to the Officers at Newcastle, and from them to receive Licences, and that they pay one Guilder per Cann for all they shall distill, which shall go towards the Reparation of the New Block-house and Fort. About the Whorekill it is ordered, that what is past, and granted there, shall be confirmed, upon the same Conditions as the rest of the Land: with this Proviso, that each Planter be obliged to settle upon the Land, and that each Person be enjoined to settle a House in a Town to be appointed near them. New-York Records, No. 1. Fol. 40.

(June 14.)

The next Paper is some written Proposals, tendered to the Consideration of the Governor and Council, touching the Town of Newcastle and Plantations in Delaware River, now under his Royal Highness's Protection and Government. (Note, this is the Paper which the Governour and Council had, that Day, under their Consideration (The Town of Newcastle, being the Strength of the River, it's left to Consideration whether they should not have more than ordinary Encouragment. 1. That a Block house may be erected, and a constant watch may be kept now the Fort is fallen to ruin. 2. That no vessel from this, or any other Place to trade, be permitted to go up the River above the town, for it will ruin the Place, all Trade deserting them. 4. That the distilling of strong Liquors, which consumes Grain and debauches the Inhabitants, be prohibited. 5. That the Number of Victuallers be restrained, to such as the Officers shall approve of, and may be licensed. 6. That Constables may be appointed who shall have Staves with the King's Arms, as is practised in the rest of his Royal Highness's Dominions. 7. To have the King's Arms in their Courts of Justice. 8. That what Lands the Officers there have granted, (which they had Encouragement to do by the Governor's Predecessor, and never had Order to the contrary) may be confirmed. 9. That several Orders, past about the Time of the Trial of long Finn as well about public Charges, as the Whorekill having Officers subordinate to those of Newcastle, as for clearing Highways, maintaining Fences, and other Matters, relating to the Well-Government of that Place, be reinforced, by the Governor's Approbation. 10. That whereas their Neighbours of Maryland have made offer to clear one Half of the Way, between Augustine

Harman's Plantation and the Town of Newcastle, an Order may be issued that those of Delaware should clear the other Half next to them. 11. That a Person be appointed and sworn at Newcastle, Corn-meeter, to see that it be sent abroad clean, and to view their Beef and Pork, that it be well packt and merchantable. 12. That a Mill, up Delaware River, at the Carcoons Hook, heretofore belonging to the Publick, but now endeavour'd to be engross'd by private Persons, may be taken into his Highness's Hands, for the publick Good to the Inhabitants. This is New York Records, No 1. Fol. 41.

June 14.

Minutes of the Governor and Council of New-York, in Answer to the Proposals, delivered in by Capt. John Carr, the Governor and Council do give their Resolutions upon each one of them; in general, agreeing to what was proposed for the most part; and some former Grants of Lands made by the Officers at Newcastle, were confirmed; but, for the future, it's expected, before any Grant be absolutely made there by the Officers, that the Desires of Persons to have Lands, and the Quantity thereof, be first transmitted to the Governor at New-York, who, as he shall see Cause, will order the Surveyor to make a Survey, which being certified, they may have Patents of Confirmation for the same; and the Officers are to acquaint Persons, who apply to them for Lands, with this Order. Lastly, As to the Tenure of the Land at Delaware, it's to be held in free and common Socceage, as his Royal Highness by his Majesty's Patent holds all his Territorvs in America, that is to say, according to the Custom of the Manor of East-Greenwich, only, with this Proviso, that they likewise pay the Quit-Rents, reserved in their Several Patents, as an Acknowledgment to his Royal Highness. New-York Records, No 1. Fol. 42.

June 17.

Governor Lovelace's Commission, dated at New-York, appointing Walter Wharton to be Surveyor-General of Lands on the Western Side of Delaware River, now under his Royal Highness's Government and Protection. He observing such Orders as he shall receive from the Governour. New-York Records, No 1. Fol. 43.

June 21.

Minutes of the Governor and Council of New-York. The first Matter and Consideration is the Business of Delaware about granting Patents there. Capt. Carr declares, that Governor Nicolls gave the Officers Order to make Grants of Land to those that would plant there, which being remitted to the Governor, he was pleased to give Patents for them. The signing of Patents

for those Parts concluded on. An Order, also, relating the Grant to Mr. Mills, the which is to extend only to the Whorekill Lands, tho' mentioned Parts adjacent, on the South side of the Whorekills. New York Records, No. 1, Fol. 43.

Sept. 25.

Minutes of the Governor and Council of New York, upon a Letter sent from Mr. Toms, and upon the Examination of Peter Alricks, about a new murder of two Dutchmen, killed by some Indians at Mattiniconk in Delaware River. New York Records, No. 1, Fol. 44.

Note.

For the better understanding of what follows, it is necessary to inform you, (tho' it is not in Proof on our side) that, before this Time, the Duke of York had conveyed away New Jersey (a Tract lying between New York and what is now Pensilvania) unto the Lords Proprietors of New Jersey.

Sept. 25.

Resolves, at a Council held at New York by the Governor of these his Royal Highness's Territories, and the Governor of New Jersey, upon Consideration about the said Murther, not to prosecute this Affair about the Indians without mutual Consent; and that the Governor of New Jersey call an Assembly in his Province, to know how far that Province will assist in case of a War. New York Records, No. 1 Fol. 45.

Sept. 26.

Governor Lovelace's Letter, directed to Mr. Tom at Delaware: Blames him that his, the Governor's, Directions had not been vigorously followed on the last sad Accident, which might have prevented this. Think, immediately, how a War may be prosecuted on these Villanies. In the mean Time I think it requisite that all the Frontier scattering Plantations, be order'd immediately to thrash out, or remove, all their Corn, as likewise their Cattle, that they may receive less Damage by the Effects of the War which will ensue. Next, that none, on pain of Death, presume to sell any powder, Shot, or strong Waters to the Indians. In the mean time carry it fair to the Indians that they may have the less Mistrust of our Designs. Tells him also that the Governor of New Jersey is acquainted with the Affair, and is very zealous therein, and we may depend on Supply and Assistance from him. If a good Work were thrown about Mattiniconk House, and that strengthened with a Considerable Guard, it would be an admirable Frontier. New York Records, No 1. Fol. 46.

Sept. 28.

Governor Lovelace's Letter from New York to Captain Carr: You being ill, I directed my Letter to Mr. Tom, but sends Captain Carr a Duplicate of it, that he may guide himself by those Rules which the Governor then prescribed. As the Governour and Council, at this Distance, cannot give punctual Directions, we must therefore reserve that to your prudent Managery, wherein I would have you, always, take deliberate Advice, from the Commissaries, before you put any thing in practice, and be sure, on all Occasions to advertise me of your Motions. New York Records, No 1. Fol. 47.

Sept. 29.

Governor Lovelace's Pass dated in New York, to permit the Sloop Royal Oak, Thomas Lewis Master, to pass out of the Port of New York to Newcastle in Delaware Bay, and, at this particular Juncture of time, from thence, to go up the River, to trade and traffick as the Masters occasion shall require. New York Records, No 1. Fol. 47.

Nov. 7.

Minutes of a Joint Meeting of Governors and Councils (in East New Jersey) by the Governor of his Royal Highness's Territories, and the Governor under the Lords Proprietors of East New Jersey, deferring the Warr, at that Time, and containing several other Directions. New York Records, No 1. Fol. 48.

Nov. 9.

Governor Lovelace's Commission, dated at New York, and under the Seal of that Province, issued by the Advice of his Council, appointing the present Officers and Magistrates in Newcastle and Delaware River, or any 4 of them, to be a special Court of Oyer and Terminer, to try and pass Sentence and execute it on the Murtherers, if taken. New York Records, No 1. Fol. 49.

Same Day.

Governor Lovelace's Order, reciting the pass which he had granted to Thomas Lewis (the 29th of September) to trade, at this particular Time, notwithstanding any General Order heretofore made to the contrary; but the said Lewis being now in the said River with his Sloop, where he is stopt by Order from the Officers there; I order the said Stop to be taken off. New York Records, No 1. Fol. 49.

Nov. 10.

A severe Letter from Governor Lovelace's at New York, to Capt. Carr at Delaware, Complains of the Backwardness of the

Inhabitants of Delaware, to bring the Murtherers to condign Punishment. Then as to Captain Carr, says the Governor, for you to receive the Duke's pay constantly, and the Appearance of Soldiers, and to let the Fort run so to decay, and not employ them in the Reparations, is but just a perfect Rent charge to the Duke; for it is not reasonable he should be at that Expence, only to allow you a Sallary and Soldiers; besides the Inhabitants are not so much digested into any military Form, nor half of them armed, tho' you have had, annually, a Monitors by the Murthers committed by the Indians, &c. New York Records, No 1. Fol. 51.

Nov. 24.

Governor Lovelace's Warrant, or Order to all Persons in this Government, to assist a publick Messenger going down to Newcastle, or back again to New York. New York Records, No 1. Fol. 52.

Decemb. 15.

Mr. William Tom of Delaware, his Letter to the Governor, acquainting him, that the Indians have killed and brought in one of the two Murtherers, and we design to hang him in Chains and the Indians promise to bring in the other.. New York Records, No 1. Fol. 52.

Dec. 22.

Governor Lovelace's Answer to Mr. Tom, approves of their hanging the Indian's Body in Chains; and if the Indians bring in the other Murtherer alive, let him suffer in the most exemplary way that may be, leaving the Manner and Place to your self. Bids him now, while the thing is fresh, enquire after the former Murtherers. New York Records, No 1. Fol. 53.

Jan. 13.

Governor Lovelace's Order dated at New York, Recites that there had been, lately, an Order of Prohibition made, that no Corn should be exported out of Newcastle or any Part of Delaware River; since which, the occasion thereof, which was the expected War with the Indians being removed, and the Inhabitants there having Grain sufficient for themselves, and also to supply their Neighbors, therefore, requires all Persons to permit Captain Crierger to pass out of the Port of New York with his Ship, to Newcastle, there to take in Corn, or any other Produce of the Country. New York Records, No 1. Fol. 53.

Same Day.

The Governor's Licence to Susanna Garland to Trade to Delaware. New York Records, No 1. Fol. 53.

Jan. 16.

Governor Lovelace's Order or Brief, dated at New York, and granted to Martin Hoofman, a Lutheran Minister; requiring the Officers in Delaware not to hinder or molest him in collecting the Benevolence of the Lutherans in the South River at Delaware and those Parts, towards building a House in New York, for their Church or People to meet in. New York Records, No. 1. Fol. 54.

Jan. 16.

The Governor's Release to Matthias Nicolls, the Secretary, dated at New York, of any Damage for not having, in due time, made any Settlement upon a distant Parcel of Land which had been patented to him in Delaware, on the West side of the River near the Falls, known by the Indian Name of Chiepiessing. Provided that some Settlement be now made within 3 Years to come. New York Records, No. 1. Fol. 54.

Feb. 6.

The Governor's Pass to permit Helletia, Wife of Laurence Holst, to go in Captain Crieger's Sloop, to Newcastle in Delaware, from thence, to go, up the River, to the Swedes Plantations, with Shoes, &c. of her Husband's Trade. New York Records, No. 1. Fol. 55.

Feb. 20.

From the Records of Newcastle County, Governor Lovelace's Grant, at full length, dated at New York, and granted by him as he was Governor General under the Duke of York, of all the Duke's Territories in America, Reciting a Grant which had been made by the Officers at Delaware unto Reloff Anderson, of 200 Acres of Land, on the West side of Delaware River, and on the North West side of Apoquiminick Creek, bounded by Drawers Creek, and by sundry Neighbours there named; Now the said Governor, by Vertue of the Duke's Commission to him, ratifies, confirms and grants the Premises to the said Anderson in Fee, reserving to the Duke the Rent of 2 Bushels of Wheat. Newcastle Records, No. 11. Fol. 5.

1671. *Feb. 26.*

Governor Lovelace's five several like Grants, entered at full length, all dated in New York, and granted by Vertue of the Duke's Commission to him, of several Parcels of Land, before granted by the Officers at Delaware. 1. To Jacob Piana, 188 Acres, on the West side of Delaware River, and on the North-West side of Apoquiminick Creek, reserving a Quit-Rent to the Duke of a Bushel and $\frac{1}{2}$ of Wheat. 2. To Garrett Otto, 186 Acres, at the like Place, reserving Quit-Rent 1 Bushel. 3. To

Hans Hanson. 100 Acres at the like Place reserving Quit-Rents 2 Bushels. 4. To John Aronson and Jacob Anderson, 157 Acres, reserving Quit-Rents to 1 Bushel and $\frac{1}{2}$. And 5. To Abraham Coffin 400 Acres. Reserving Quit-Rent 4 Bushels. Newcastle Records, No. 11. Fol. 6, 7, 8, 9, 10.

Mar. 12.

Governor Lovelace signs Instructions, at New-York, to one Mr. Garland, to make Preparation for the Governor's Voyage to Delaware; namely, to go before, with a Party of Horse, near to Mattiniconk Island in Delaware River, &c. and then to Captain Carr, and the Commissarys, to get Provisions, Boats, &c. and to meet the Governor at such a Place. New York Records, No. 1. Fol. 55.

Mar. 18.

Governor Lovelace's Instructions, directed to Thomas Delawall and Cornelius Steynwick, two of my Council, to the Duke of York in these his Territories of America. They are to the following Purport: Tells them (amongst other things) that they are not unacquainted with the Design of this his Resolution, of visiting those more remote Parts of the Duke's Territories at Delaware, where he hopes to settle all publick Affairs there, as may free him from the further Trouble of a sudden revisit of them. New York Records, No. 1. Fol. 55.

1671.

In this Year a very large Folio Work (of several Tomes) was printed in London, being done and printed by John Ogilby Esq; his Majesty's Cosmographer, Geographick Printer, &c. called Ogilby's Atlas, adorn'd with Maps and Sculptures: In the second Tome of which, being Ogilby's America, at Fol. 168, he gives an Account (very shortly) of the New Netherlands, then called New York, which comes up very nearly to the Account which the foregoing Records give. But what we principally rely on in that Book is, several Maps, which he therein published in 1671, viz. at Fol. 192, he gives a Map of Virginia, which is (tho' with other Names additionally inserted then) an exact Copy of Captain Smith's Map. At Fol. 182, he gives a Map of Maryland, with the Arms of the Lord Baltimore, being agreeable to that which had been printed by the Lord Baltimore in 1635, save, that he makes the dotted partition, and the 40th Degree compleat, to be, then, about 7 Miles above the Head of Chesopeak Bay, whereas in 1635, Lord Baltimore had made that dotted Line and 40th Degree to touch the Head of Chesopeak Bay. And at Fol. 168, he gives a third Map, with this Title. *Novi Belgii quod nunc Novi Jorek vocatur,*

Novæque, Angliæ, & partis Virginie, accuratissima & novissima Delineatio; in which last mentioned Map he, again, nine Years before ever the Plaintiff's Father had any thing in the World to do with America, lays down, separately and distinctly, Cape Cornelius and Cape Hinlopen, as two separate and distinct Capes and Cape Hinlopen at a large Distance South of Cape Cornelius, (exactly as it was laid down in the Maps made use of by all the Parties of this Cause in concluding the Articles of Agreement which are now in Question.) And this is so well a known Work, that if the Defendant had ever looked into it (as he must have done) he could not have fancied any thing of the pretended imposition, as he would now complain of, having been committed in 1732; whereas the old Dutch Map of 1663, (at the latest, but most likely many Years older) and this English Map printed in this great Work in London, in 1671, both contain the two several Capes as before mentioned. This Book of Ogilby's is spoke to by Paris and other Witnesses, and the Reference to it is, Ogilby's Atlas. To, 2. in large Folio; and at Fol. 192, 182, and 168 therein.

Mar. 17.

An Order of the King and Council, that the Secretary of State should publish his Majesty's Declaration against the States General, and the said Declaration (which is a Declaration of War against them both by Sea and Land.) These are proved from the Council Register by Dickenson, and make the Exhibit Co. Off. No. 3.

1672. *Apr. 8.*

Governor Lovelace's Grant, by Vertue of the Duke's Commission to him, dated at Newcastle in Delaware River, Reciting that the Dutch Governor, Peter Stuyvesant, did on 27 Sept. 1655, grant to Isaac Tyne, a Lot and House, at Newcastle, and Tyne having on 17 and 20 Octob. 1662, purchased two other Lots, all contiguous to each other, the said Governor ratifies, confirms and grants the same unto the said Tyne, in Fee. Reserving the Quit-Rent of a Bushel of Wheat to the Duke. Newcastle Records, No. 11. Fol. 11.

May 6.

The Governor's Order, dated at New-York; Whereas the Time is expired for the Officers holding their Places of Scout and Commissarys at the Whorekill; the Inhabitants there are hereby impowered to make a New Election, upon the return of whose Names to me, they shall have such further Confirmation as shall be requisite. New York, No. 1. Fol. 33.

May 17.

Minutes of the Governor and Council at New-York. 1. About the Town of Newcastle's being a Corporation, it's allowed of, and that it be a Bayliwick, and governed by a Bayly and 6 Assistants; after the first Year. 4 old ones to go out, and 4 other to be chosen in their Places. The Bayly to be President, and have a double Vote. A Constable, to be chosen by the Bench. To try Causes, as far as 10*l*. without Appeal. 2. As to the English Laws, according to their Desire, to be established in that Town and River. The Office of Scout to be converted into a Sheriff, for the Corporation and River, and that he be annually chosen. 3. As to the 3*d*., to have free Trade, without being obliged to make entry here, that the Determination thereof be suspended, until advice be sent about it out of England, or other Consideration had thereof. New-York Records. No. 1. Fol. 56.

June 10.

Minutes of the Governor and Council at Fort James; As to the Matter about Captain Carr, and Delaware, the Orders made, last Council, about the Town and River, to be allowed and sent. The Continuance of the Garrison in pay, taken into Consideration, whether there is any Occasion for them any longer or no? That they continue, as they are, till further Order. New York Records, No. 1. Fol. 57.

July 1.

Minutes of the Governor and Council of Fort James; The Business of the Whorekill, about a Disturbance there from Maryland. Mr. Fletcher makes good what he writ against Daniel Browne, for his abusive Language against the Duke's Interest, and it is attested by the Commissarys and others from thence; Ordered, that Daniel Browne shall enter into a Recognizance of 20*l*. for good Behaviour, &c. which Order recites, that Daniel Browne, a Planter at the Whorekill in Delaware Bay, was committed and sent a Prisoner hither (New York) by the Magistrates there, for contemning the Authority of their Court held by Approbation of the Governor, under the Protection of his Royal Highness, together with several other abuses; but he having acknowledged his Fault, and begging Pardon, and that Confinement would ruin his Affairs; ordered a Letter of Thanks be sent, to the Magistrates at the Whorekill, and that Browne be released, he entering into a Recognizance, before his Departure, in 20*l*. to keep the Peace, which if he break, he is to be again seized upon, and sent Prisoner to this Place, there to receive Punishment; and he is likewise, at his Return to acknowledge his Fault, and ask pardon of the

Magistrates at the Whorekill. As to the Request from the Whorekill, that they may lay an Imposition on strong Liquors sold there, it is allowed of and consented to; and the Magistrates there, have, hereby, Power to levy and receive the Value of four Guilders, in Wampum, upon each Anchor; this to continue for one Year only, till the Conveniency or Inconveniency shall better appear. New York Records, No. 1. Fol. 57.

Aug. 1.

The Governor's Order at Fort James in New York. Upon the Return of a double Number, from the Inhabitants at the Whorekill in Delaware Bay, for Scout and Commissarys, I approve of such and such for Scout and Commissarys, for one Years, after which they are to make a new Return. New York Records, No. 1. Fol. 5.

Aug. 2.

The Governor's Commission dated at Fort James in New York, appointing Peter Alricks, one of the two Persons return'd to him, to be Bayliff and principal Civil Magistrate of the Corporation of Newcastle in Delaware for the ensuing Year, And he is, in all things, to be regulated by the Laws of this Government, and such Instructions as have been given him by me and my Council. New York Records, No. 1. Fol. 58.

Same Day.

The said Governor Lovelace's Commission dated at Fort James in New York, appointing Captain Edmund Cantwell, one of the two Persons return'd to him, to be High Sheriff in Newcastle and Delaware River, for the Year ensuing. New York Records, No. 1. Fol. 5.

Aug. 7.

Governor Lovelace's Commission to Captain Edmund Cantwell, dated in New York, appointing him to enquire after, and make seizure at Newcastle, and on the West side of Delaware, of all stray Horses, neat Cattle, or Swine, unmarked, and having no certain Owner; and to dispose of them for his Royal Highness's use, and render to the Governor an Account thereof. New York Records, No. 1. Fol. 59.

Same Day.

Governor Lovelace's Commission, to the said Captain Cantwell, dated in New York, authorising him to demand, levy and receive all Arrears of Quit-Rent, due from any the Inhabitants of New-Castle and Delaware River, according to the Reservation in their particular Patents, of which he is to have an authentick List out of the Records. New York Records, No. 1. Fol. 59.

Aug. 8.

From the Records in New York; An Order reciting that Complaint has been made to me (the Governor) by Jan Cornelius and two others, Inhabitants at Amsland in Delaware River, that after having quietly possessed a Meadow, upon the Island over against Calcoone Hook, Israel Helme, by Misrepresentation, obtained a Patent for the same, having never Possession or Pretence thereto before: so that the said Inhabitants are dispossessed, to the Ruin of their Plantations without Relief; I authorize and impower the Court at Upland, with the Assistance of one or two of the high Court, to examine into the Matter, and make Report of the Truth thereof to me, that I may make some Order thereupon, according to Equity and good Conscience. New York Records, No. 1. Fol. 59.

Aug. 12.

Letter from Governor Lovelace, dated in New York, directed to Philip Calvert Esq; Governour of Maryland, complaining of some horrid Outrages, committed upon his Majesty's Subjects under the Protection of the Duke's Authority, as were exercised by one Jones, who with a dissolute Party, took the Pains to ride to the Whorekill, where, in Derision and Contempt of the Duke's Authority, bound the Magistrates and Inhabitants, rifled and plundered them of their Goods; and when his Authority was demanded, answered only by a cock'd Pistol to the Person's Breast; telling him, that his Highness will not be satisfied with these violent Proceedings, the Indignity whereof rebounds on him; and it would be as easy for Governor Lovelace to retaliate the same Affront on Jones, and his Accomplices, but that he first chuses a more calm Redress from Mr. Calvert, to whom he now appeals, expecting the Castigation of Jones, cum Sociis; otherwise, he must take other Remedies as the Exigence of this Indignity shall perswade him to. New York Records, No. Fol. 60.

It seems by what follows by and by, that no Reparation was made by Governor Calvert, but a farther injury afterwards committed.

Same Day.

The Governor's Order to Captain Edmund Cantwell, High Sheriff of Newcastle and Delaware, to cause some Land to be seated and cleared, by a Tenent or otherwise, on the West side of Delaware River, which had been formerly granted unto Richard Gorsuch, and since by him assigned to the Governor. New York Records, No. 1. Fol. 60.

Aug 13.

The Governor's Order at New York, made at the Request of

Jeuffro Armegart Prince, living in Delaware River, excusing her Man Servant from ordinary Trainings in the Company in which he was inlisted; and also giving her Licence to still some Liquors for her own Use, and her Servants and Labourers in Husbandry. The Last to continue one Year. New York Records, No. 1. Fol. 60.

Sept. 5

From New York Records, Order to Captain Carr, upon the Complaint of Robert Williams, that John Ogle, one of the Soldiers at Newcastle, is indebted to him about 10*l*. requiring the Officers there to examine into the Matter, and if it be as alledged, to give Orders for the Payment, or securing the Debt from Ogle for the Creditor. New York Records, No. 1. Fol. 60.

The same Day.

The Governor's Order to one Bedloo, to pay some Persons their Boat Hire, for carrying, and bringing back the Troopers Horses, in the Expedition to Delaware. New York Records, No. 1. Fol. 61.

Sept. 28.

New York Records, a Permit to Christopher Hoogland, to go to Newcastle at Delaware, and from thence up the River, to receive or secure his Debts; any Order to the contrary notwithstanding. New York Records, No. 1. Fol. 61.

Oct. 1.

Grant from Governor Lovelace, dated in New York, unto Hubert Hendrickson, in Fee, of three Lots of Land in Newcastle, reserving two Bushels Quit Rent to the Duke. Newcastle Records, No. 11. Fol. 12.

Oct. 7.

Governor Lovelace's Letter, dated from New York, to Captain Carr, owning the Receipt of his Relation and Papers about the Whorekill, and the Marylanders forcibly possessing themselves of the Place, as also of the Goods and Estates of some of the Inhabitants. I heard, but did not give Credit to it before, supposing it the rash Action of some private Person; not thinking the Authority of Maryland would invade the Duke's Territories, which he hath been possessed of for near eight Years: Their former violent Action, and Force, upon those poor, unarm'd People, together with the Particulars of their Plunder. I immediately sent to the Duke, and may expect Directions in a short Time, till then, it is best, for the present to leave Matters as they are. As to the Cloud, which likewise hangs over your Heads at Delaware, which, it is said, they are making Preparations to invade, my Orders are, put yourselves

in the best Posture of Defence, fit up the Fort, keep your Companies in Arms, both there and up the River, in the Town, especially, make your Guard as strong as you can, and keep a strict Watch. If any Enemy comes to demand the Place, first desire to know their Authority and Commission, and how those of Maryland should, now, make such an Invasion, after so long, quiet Possession of those Parts, by the Duke's Deputies, under his Majesty's Obedience, and by other Nations before that, several Years, before the Date of Lord Baltimore's Patent, whom they never disturbed by Arms, and whose Right is now devolved upon the Duke. Stand well on your Guard, and don't begin; but if they fire, or commit any hostile Action, then, use all possible Means of Defence. New York Records, No. 1. Fol. 61.

So that it appears hereby, that this was the Time when the Marylanders, by Force, possessed themselves of the Whorekills, but they not keep Possession of it, as you'll presently find.

Dec. 16.

From New York Records, A Warrant directed to the Sheriff of that City, to take into his Custody the Body of William Douglas, brought thither a Prisoner from Newcastle in Delaware, he having been formerly banished out of this Government for great Misdemeanors, and to keep him without Bail or main prize, till further Order. New York Records, No. 1. Fol. 62.

Jan. 27.

Minutes of the Governor and Council at New York, upon representing to them the Inconvenience of debarring Vessels of this Place from going up the River above Newcastle, as also the Distaste taken, that some have had Licences so to do, while others are restrained. It is ordered, that the Prohibition thereof be taken away, and all Sloops may go up that River, taking a Certificate from the Governor of his going from hence; but no other Vessel shall have that Liberty, but such as sail from this Place thither directly. Upon a Letter from Mr. Wharton, and Captain Cantwell, and a Proposal for the Reducement of the Whorekill, by the Officers from Delaware, the Consideration thereof suspended for a short Time. On the Letter with which William Douglas was sent from Delaware, it is ordered, in regard of the Trouble he has given the Country, that he be sent, by William Shackerly, to Barbadoes, there to be sold, to make Satisfaction towards the Charges he has occasioned. New York Records, No. 1. Fol. 62.

1672. *Feb. 20.*

The Governor's Order, dated at New York, Recites, that Jeuffro Armegart Prince obtained a Judgment on Verdict of a Jury, at the last General Court of Assize, against Andrew Carr,

and his Wife, for 3000 Guilders, or 300*l.* sterling, the Determination whereof being referred to the major Part of the Bench, they made a Report, that 50*l.* should be allowed for Interest, leaving the other Charges and Costs to the Determination of the Law. Upon due Consideration had thereupon, the Governor confirms and approves of the Judgment for the 300*l.* and 50*l.* for Interest, together with 5*l.* more, towards the Plaintiff's Charges, and the usual Costs of Court, all which is to be levied upon the Estates and Goods of the Defendants in Delaware River, or elsewhere, within the Government: To which End the Governor appoints four Persons to be Commissioners to appraise, and set a Value upon the Island of Titticum in Delaware River, not long since in the Tenure of the Defendants, as also all other Goods or Estate belonging to them, to make Payment to the Plaintiff. New York Records, No. 1. Fol. 62.

The same Day.

The Governor at New York signs an Execution, directed to the Sheriff of Newcastle, in Delaware River, against the said defendants, for the aforesaid debt, &c. New York Records, No. 1. Fol. 63.

March 10.

A Pass for John Schouten, to go, with his Sloop, to Newcastle in Delaware River, or Parts adjacent, and to return again with his Loading hither. New York Records, No. 1. Fol. 63.

The same Day.

A Licence to John Garland, to trade or traffick with the Indians, or others, at the Whorekill, or any other Parts at Delaware, in any Goods not prohibited, and likewise to go up the River above Newcastle, in any Vessel belonging to this Place, according to the Toleration granted by me in Council, 27 January last. And all Officers and Magistrates at Delaware are required not to hinder him, any former Orders to the contrary notwithstanding. New York Records, No. 1. Fol. 63.

1673. *Apr. 7.*

Two several Grants at full Length, from Governor Lovelace, as the Duke's Governor, both dated in New York. 1. To Mathias de Ring and Emilius de Ring of a House and Lot of Ground at Newcastle, reserving to the Duke the Quit Rent of one Bushel. 2. To Captain Edmund Cantwell, and Johannes de Haes, of 100 Acres of Land between Dog Creek and Namon's Creek, reserving to the Duke the Quit Rent of one Bushel of Wheat. Newcastle Records, No. 11. Fol. 13, 14.

April 14.

From the New York Records, Minutes of the Governor and

Council. The Affair of the Whorekill taken into Consideration; Letters read from Captain Carr, Captain Wharton, and Captain Cantwell; with their Proposals for Reducement of the Place, it is ordered, that a Commission be sent, to the Officers and Magistrates at Delaware, to go to the Whorekill, there to keep a Court in the King's Name, and enquire of all irregular Proceedings, and settle the Government and Officers there, as formerly, under his Majesty's Obedience, and the Protection of his Royal Highness; for which there shall likewise be sent particular Instructions. New York Records, No. 1. Fol. 64.

So that this shews that the Marylanders did not keep Possession of the Whorekills.

June 24.

Minutes of the Governor and Council, and a Proclamation, reciting the great Scarcity of Wampum, throughout the Duke's Territories, which was paid and received as Current Payment there, in all Transactions between Man and Man: Therefore, in order to bring in Wampum, encreasing, and raising the Value of it to one Third more than it was of before; and this Proclamation shall be sent, and promulgated in Albany, Esopus, and Delaware, &c. there to be in Force. New York Records, No. 1. Fol. 64.

It is hoped the foregoing Records, under this Chapter, afford super-abundant Proof of the Fact, that the Duke of York (also) from 1663 to 1673, did actually possess both New York, and Delaware; and that he, by his successive Governors, Colonel Nicholls, and Colonel Lovelace, held and accounted Delaware, as Part of, and appurtenant, in his Time to New York; and that he did, in the Terms of our Allegations in our Bill, all Sorts of Acts of Ownership, Government, and Propriety in Delaware, equally, and as well as in New York.

But, it being now Time of War with the Dutch, they, by the Numbers of Dutch left there at the former Conquest, did, about this Time, for a few Months only, dispossess the Duke, as shall be shewn in the next Place.

CHAP. IV. *Of the Dutch regaining Possession (or a few Months) of New York and Delaware also.*

1673. *Aug. 12.*

Out of the Dutch Record Book, (remaining in the Secretary's Office of New York) containing Orders of the Council of War, by the Commanders of the Dutch Squadron—is extracted the following Dutch Commission, viz. The noble and strict Council of

War, under the States General and Prince of Orange, of a Squadron of Ships now riding at Anchor in Hudson's River, in New Netherland. To all, &c. Greeting. Whereas it is necessary to appoint a fit Person, who, as Governor General, is to have the chief Command over this Conquest of New Netherland, with all its Appendencies and Dependencies, beginning from Cape Hinlopen, or South Side, of the South, or Delaware Bay, and 15 Miles more Southerly, (with the said Bay, and South River, included) as the same, in former Times, by the Directors of the City of Amsterdam, and, afterwards, by the English Government, in the Name, and under the Duke of York, was possessed; and further, from said Cape Hinlopen, alongst the main Ocean, to the East End of Long Island, and from thence Westward, &c., provided it come not within ten Miles of the North River, in pursuance of some Provisional Limits made in the Year 1650, and afterwards by the States General, on 20 Feb. 1656, and on 23 Jan. 1664, ratified; so we by Virtue of our Commission granted to us by the States General and Prince of Orange do appoint Anthony Colve, the Captain of a Company of Foot in the Service of the States General, and the said Prince, as Governor General, those Lands, and Forts thereto belonging, with all its Appendencies and Dependencies, to govern, rule, and against all Invasions of Enemies to defend; ordering all Officers, Judges, Magistrates, Commanders, Soldiers, Freemen, and all Inhabitants of those Countries to obey him as Governor, Dated in Fort William Hendricks; and signed Cornelius Everse Jun. and Jacob Binkes, Dutch Records from New York, No. 2. Fol. 43.

Sept. 19.

At the Meeting of the Gentlemen, Commanders, and Council of War, held 19 Sept. 1673, the foregoing Commission, for Governor General Anthony Colve, was registered this Day, by Order of the Commanders. Dutch Records, No. 2. Fol. 43.

Sept. 19.

The same Day Governor Anthony Colve, by the Title of Governor General, under the States General, and Prince of Orange, by his Commission, reciting the Necessity to appoint a Person to be Commander and Sheriff, in the South River of New Netherland, last called Delaware, beginning from Cape Hinlopen, and as much more Southerly as the same, heretofore, in the Time of the former Dutch Government, was possessed and enjoyed, to the Head of the said River; and reciting the good Character of Peter Alricks, late Ensign and Factor there, at the Time of the said former Dutch Government, does appoint the said Peter Alricks Commander, and Sheriff of the

said River, and the Inhabitants thereof, to govern and rule, under the chief Command and Direction as above said, the said River and Inhabitants, as well on the East as Western Shore, and to defend them from all Enemies Invasions. Dated at Fort William Hendrick in New Netherlands; signed A Colve. Dutch Records, New York, No. 2. Fol. 45.

Feb. 16.

An Entry in the Dutch Book of Records, that a Patent and Ground Brief was granted to two Brothers, Ephraim and Caspar Harmans, for a Neck, or Piece of Land, in the South River, below New Amstel, on the South Side of Apoquinimini Creek, by Dieck Creek, and St. Augustine's or Arien's Creek, containing, besides the Meadows, 250 Morgan, (500 Acres) which Ground Brief is signed by the Governor Colve, and the Secretary N. Bayard. Dutch Records, New York, No. 2. Fol. 45.

The same Day.

The same Grant entered at full Length in the old Records of Newcastle. Newcastle Records, No. 11. Fol. 15.

Feb. 9-19.

Articles of Peace between King Charles the Second, and the States General, concluded at Westminster, the 6th Articles whereof is in these Words. "That whatever Country, Island, Town, Haven, Castle, or Fortress hath been, or shall be taken, by either Party, from the other, since the Beginning of the late unhappy War, whether in Europe, or elsewhere, and before the Expiration of the Times above limited for Hostility, shall be restored to the former Owner, in the same Condition it shall be in at the Time of publishing this Peace." This is printed by the King's Printer, and by the King's Special Command, so long ago as 1685, and is the printed Book of Treaties, Fol. 180.

Certificate from the King's Prothonotary in Chancery, that He cannot find any Inrollment of this Treaty neither, nor any Original, or other Transcript, or Memorial of it. Paper Certificate.

NOTE—This Treaty also has been diligently enquired after by Paris, but is lost.

So that by this Treaty we see the Dutch gained but a short Possession of New York and Delaware, of a very few Months only, before they restored it again to this Crown, by Treaty.

CHAP. V. *From the New Grant made by King Charles the Second to the Duke of York, in June, 1674, down to the Time of granting Pensilvania, and the Lower Counties, to Mr. Penn, and his being in full Possession of all the same, at the End of the Year 1682.*

26 Car. II. 1674, June 29.

From the Chapple of the Rolls, Copy of the Grant made (without any Recital) to the Duke of York, by Letters Patent, of All that Part of the main Land of New England, beginning at St. Croix, next adjoyning to New Scotland in America, and extending, along the Coast to Pemaquid, and so, up the River thereof, to the furthest Head of the same, as it extended Northwards; and extending, from thence, to the River of Kinebequie, and so, upwards, by the shortest Course, to the River Canada, Northwards; and also all that Island called Mattowacks, or Long Island, lying towards the West of Cape Codd, and the Narrohighansetts, abutting upon the main Land, between two Rivers there, severally called Connecticut's and Hadson's River; and the said River, called Hudson's River; and all the Land, from the West Side of Connecticut River, to the East Side of Delaware Bay: and also all those several Islands, called Martin Vinyards, and Nantuckett; together with all the Lands, Islands, Soils, Rivers, Harbours, Mines, Minerals, Quarries, Woods, Marshes, Waters, Lakes, Fishings, Hawkings, Hunting, and Fowling; and all other Royalties, Profits, Commodities, and Hereditaments, to the said several Islands, Lands, and Premises belonging and appertaining, with their, and every of their Appurtenancies; and all the King's Estate, Right, Title, Interest, Benefit, Advantage, Claim, and Demand, of, in, or to the same, or any Part thereof.

To hold to the Duke of York in Fee, to be held of the King, as of the Manor of East Greenwich, in free, and common Socage, and not by Knights Service, rendering 40 Beaver Skins yearly:

With Powers of Government, &c., granted to the Duke of York, and to appoint Governors, Officers, and Ministers under him; and an express Power (Fol. 4) to the Duke of York, his Governors and Officers, for their Defence and Safety, to encounter and expulse, by Force of Arms, as well by Sea as by Land, all such Persons as, without their Licence, should attempt to inhabit within the several Precincts and Limits of his Majesty's said Territories, and Islands, &c. Being in the like Words with the former Grant, made to the Duke in 1663. This Exhibit is proved by Bulmer, and is Rocha, No. 5.

Please to observe, that this second Grant to the Duke of York, of all Lands belonging to his great Settlements, when, in Fact, Delaware, had really belonged to those great Settlements for ten Years together before, in the Hands of the Duke of York himself, as well as that it had also, before that, belonged to the Dutch, whilst they had the Possession of New Netherlands, (from 1629 to 1674, in the whole) seems to make those general Words more significant and effectual to the Duke of York, in this second Grant, than they were in the first Grant, made to him 11 Years before.

July 1.

In two Days after the Grant to the Duke of York he granted a Commission, reciting the Letters Patent to himself, and appointing Major Edmund Andros to be his Lieutenant and Governor within the Lands, Islands, and Places aforesaid, to execute all Powers, which by the said Patent were granted to the Duke; requiring all the Inhabitants to yield Obedience to the said Edmund Andros Esq; and the said Edmund Andros to observe all such Orders as he should receive from the Duke. This Commission is enrolled at New-York, and our Copy from thence is New-York Records, No. 1. Fol. 65.

Oct. 31.

A Record of Matters past in Council since the Governor's receiving the Province of New-York from the Dutch, Oct. 31. 1674. Saturday, Oct. 31. 1674. The Fort being, this Day, surrendered to the Governor, Mr. Matthias Nicolls was, at the City-Hall, sworn one of the Council. Three Constables for the City of New-York were there likewise appointed and sworn. New-York Records, No. 1. Fol. 66.

Nor. 2.

By the Governor, It is resolved and ordered that the Magistrates at Albany, &c., who were in place at the time of the Dutch coming here, in July 1673, be re-established; the same for Delaware River (except Peter Alricks the Bayliff, he having profer'd himself to the Dutch, at their first coming, of his own Motion, and acted very violently, as their chief Officer, ever since) New-York Records, No. 1. Fol. 66.

Nor. 3.

Governor Andros's Letter, dated at New-York, to the Governor of Maryland, acquainting him that he had, on Saturday last, received that Place, and Dependencies, from the Dutch, in behalf of his Majesty, to continue, as formerly, under the Command of his Royal Highness. He takes this first Opportunity to acquaint him thereof, and that he has given Orders that

all Officers and Magistrates of that Government and Delaware do take Care, on this Change, to prevent, or redress, any kind of Injury to the neighbouring Colonys, and will not doubt the like on the Governor of Maryland's Part. New-York Records, No. 1. Fol. 7.

Nov. 4.

Several Officers are appointed for several Places in New-York itself; after which it goes on thus, viz. Capt. Edward Cantwell formerly Sheriff, to be Scout or Sheriff of Delaware, Mr. William Tom to be Secretary or Clerk there; Ordered that Capt. Cantwell and Mr. Tom be authorized to take possession of the Fort, Cannon, and all other Stores of War of Newcastle, or any Part of Delaware River, for his Majesty, pursuant to the Articles of Peace, and to remain in the Command thereof until further Order: That Capt. Cantwell and Mr. Tom have an Order to receive the Quit Rents, and all other Dutys, whether Customs or Excise, as formerly was established before the Dutch coming to the Place; and, for Customs, it is, since, established by his Royal Highness; and to return to me a due Account of the State of all other Matters relating to the Revenue by the first Convenience. New-York Records, No. 1. Fol. 66.

1674. *Nov. 4.*

Governor Andros's Commission, dated in New-York, appointing certain Persons whose Names are left in blank, but the Commission is directed, "To the Commissarys of Newcastle in Delaware, who were in Office at the time of the Dutch coming into these Parts in July 1673;" The Commission recites, that the Governor had received that Place and Government in the behalf of his Majesty, from the Dutch, and being invested in the Command thereof under the Duke, he, in his Majesty's Name, appoints them to be Commissarys in the Town of Newcastle upon Delaware River and Dependances, authorising them to act according to the Laws and Customs as had been used amongst them during his Royal Highness's Governor Nicolls and Governor Lovelace's time. Impowers them also, to give Order for electing a Constable, in each of the other Towns adjacent, and to administer the Oath to him, as directed in the Laws establish'd by his Royal Highness. New-York Records, No. 1. Fol. 68.

Same Day.

A short Letter from Governor Andros along with that Commission. New-York Records, No. 1. Fol. 68.

Nov. 4.

Two several Commissions from Governor Andros, both dated

in New-York. 1. Appointing Capt. Edmund Cantwell and Johannes de Haas to receive the Quit-Rents at Delaware, and Arrears thereof, together with all other Dutys, whether Custom or Excise, as were due and formerly establisht before the Dutch coming into the Place in July 1673, as also for the Customs now, as they have been since ordered by his Royal Highness, a Copy whereof is herewith sent; and ordering these Persons to send to Governor Andros a due Account of these, as well as of all other Matters, relating to the Revenue and Government. 2. The Second Commission appoints William Tom Secretary for the Town of Newcastle on Delaware. New-York Records, No. 1. Fol. 69.

Nov. 6.

Governor Andros's further Commission dated in New York, recites that Delaware is a Dependant on New York, and authorizes Captain Cantwell and Mr. Tom to receive the Fort at Newcastle, as also the cannon, and Stores of War there, or any other Part of the River, for the King's Use, pursuant to the Articles of Peace; and also to send to any other Part of the Country for repossession and settling any of His Majesty's Subjects in their just Rights, and particularly at the Whorekill. New-York Records, No. 1, Fol. 69.

Same Day.

An Entry of the Names of five Persons as Justices for Newcastle, and five more for the River. New-York Records, No. 1. Fol. 70.

Nov. 9.

Governor Andros's Proclamation, dated in New-York, recites that the King and the Duke had sent him over to receive that Place and Government from the Dutch, and to continue in the Command thereof under the Duke, he confirms all former Grants, Privileges, and Estates legally possess under the Duke before the late Dutch Government; and declare that the known Book of Laws, formerly establisht and in Force under the Duke's Government, is now again confirmed by the Duke, and Courts are to be held, and Magistrates and Civil Officers belonging thereto, are to be chosen, and establisht accordingly. New-York Records, No. 1. Fol. 70.

Nov. 11.

Govenor Andros's Commission, dated in New-York, empowering Capt. Cantwell and Mr. Tom, to administer the Oath, to the Commissarys at Newcastle, to those of the Court up the River, and to those at the Whorekill in the Bay. New-York Records, No. 1. Fol. 71.

So that the Duke of York has clearly now the Possession of the Whorekills again.

Nor. 12.

Governor Andros's Order, dated in New-York, to Capt. Cantwell, to enquire for the King's Colours, which Capt. Carr, late Deputy-Governor at Delaware had, and to use the same in the Fort, and for the Company whereof Capt. Cantwell was Captain in Newcastle. New-York Records, No. 1. Fol. 70.

Jan. 9.

Governor Andros's Letter, to Capt. Cantwell at Delaware, expressing his satisfaction that Cantwell had taken possession of the Fort, and also settled the Magistrates in Newcastle, and up the River, and at the Whorekill; gives him Orders about the Fort; orders him to give New-comers any reasonable Quantity of Lands; appoints him Surveyor for the whole River and Bay; as to the execution against Carr's Estate, my Proclamation sufficiently confirms all Judicial Proceedings; gives him Directions about the Militia; as to the Whorekill, the Number is, as yet, too little for a Company; but, if it's necessary, you may appoint a Lieutenant, who may chuse Serjeants, and command there; you have done well in summoning the Indians to demand Justice for the Murther of Dr. Roads, which pray prosecute, that it may be effected without War; but if not, let me hear from you, that I may take Order in it and supply you accordingly. New-York Records, No. 1. Fol. 72.

Feb. 23.

Governor Andros's Letter from New-York to Capt. Cantwell. I shall come into your Parts in April, in the mean time you are not to suffer Capt. Carr to make away his Estate, upon which you may lay an Attachment in the King's Behalf. You are also to prepare an Account and State of the customs to Lady-day next, to be remitted to his Royal Highness's Chief Collector here. New-York Records, No. 1. Fol. 73.

1675, *Mar. 27.*

Governor Andros's Letter from New-York, directed to Capt. Edmund Cantwell Scout of Newcastle in Delaware. About an Indian found dead and supposed to have been murdered, about the Indians having formerly murder'd Dr. Roads. About another Indian killed by an Inhabitant in the River, and Orders that the Magistrates enquire into that last Murder and do Justice immediately in it, altho' it should not be demanded by the Indians. He adds, I hope you have prohibited all manner of distilling of Corn, as well as its Transportation; if not, I pray that it be done presently. New-York Records, No. 1. Fol. 74.

Apr. 23.

Governor Andros's Letter to Capt. Cantwell, on receiving an

Account from him of the Murder of two Christians on the 8th instant about Milstone River. Tells him the Nevisans Sachemakers; and about 30 of their People had been just now with him, and concluded a Peace. I have sent to Governor Carteret, to enquire into this Murther, and to give Order for Horses for our Journey to Delaware, to be ready the last instant. I shall come by the way of the Falls, where you may meet me Tuesday the 4th, or may come on further, towards Millstone River: In the mean time look to yourselves, and give no Offence or Suspicion to the Indians. As to James Sandyland you ought to have a Court and legal Trial to detain, punish or release him, therefore, let that be done, for that was my Meaning; as to his being out upon Bail, if he be not criminal it cannot be denied him. New-York Records, No. 1. Fol. 75.

Same Day.

Minutes of the Governor and Council agreeing to the Matters mentioned in the Governor's above Letter. New-York Records, No. 1. Fol. 75.

Apr. 30.

Governor Andros's Letter from New-York, to Capt. Cantwell, on receiving from him an Express with the Alarm in his Parts, and Fear there of the Indians Intention to do Mischief: telling him his Information is wrong, for Reasons which he gives him: shall set out the 3d of May, and be at the Falls next Day, and hope for the Quiet and Settlement of all those Parts. Thanks him for his Care for the Preservation of the Inhabitants of the River, and giving Notice to prevent Surprizes, and providing against all Events; and, if there shall be Occasion, I shall not be wanting in supplying you with all Things necessary. New-York Records, No. 1. Fol. 76.

May 13 & 14.

An Order made, at a special Court, held by the Governor at Newcastle in Delaware, in the Case of the Inhabitants at Verdriety's Hook, in this River, complaining that William Tom molests them in the Enjoyment of the Meadow-Ground next their Plantations, and Tom claiming the same by virtue of a Patent from Colonel Nicolls, a Compromise relating to the Enjoyment of the same was proposed, and ordered. Records from Newcastle, No. 11. Fol. 16.

May 15.

An Order made and signed by Governor Andros at Newcastle, and recorded at the last-mentioned special Court, ordering that all new Lands be surveyed and patented, and recorded in the Court-Books, of the several Jurisdictions or Precincts; also,

that all Lands, formerly taken up and settled, but not surveyed, and the Owners have not Patents, that such Owners, forthwith, before the next general Court, give Notice to the Surveyor-General that it be done, and they take out Patents to assure them their Lands, and prevent future Disputes, and that it be recorded. In order to which, you are to give Notice at your next Monthly, or Quarterly Courts, in the several Precincts. And this Order is directed thus, "To the Three several Courts of Delaware River or Bay." Records from Newcastle, No. 11. Fol. 17.

June 23.

From the New-York Records, Minutes of the Governor and Council, upon the receiving Letters from Delaware about a Disturbance of the People there, and their Disobedience to the Magistrates, It is order'd that some Person be sent thither-about it, and that, with the Person to be sent to Delaware, two Files of Soldiers, or some Force, be sent likewise. New-York Records, No. 1. Fol. 76.

July 24.

Minutes at another Meeting of the Governor and Council, That the former Order of Council of 23 June, about the Disturbance at Delaware, be respited: and that an Order, or special Warrant, be sent thither, for Jacobus Fabricius and John Ogle, as Ringleaders, to make their Appearance here to answer the Misdemeanors objected against them touching the late Disturbance; also, the Business about Capt. Carr's Meadow-Ground at Newcastle being taken into Consideration, it is order'd that the Order made at Delaware, be observed, for the valuing of the said Land, and the Town to have the Refusal. New-York Records, No. 1. Fol. 77.

July 26.

Then immediately follows the two special Warrants, signed and sealed by Governor Andros in New-York, against Fabricius and Ogle at Delaware, reciting that the Governor had received Information from the Magistrates at Delaware, that they were principal Ringleaders in the tumultuous Disturbance upon 4th June last at the Town of Delaware, and had disobeyed the Order set forth by the Magistrates in a riotous manner; commanding them, therefore, in the King's Name, forthwith to make their personal Appearance before the Governor in New-York, to answer what shall be objected against them on that account, as they'll answer the contrary at their utmost Peril. New-York Records, No. 1. Fol. 77.

July 26.

A Grant from Governor Andros, dated in, and sealed with the Seal of the Province of New-York, recorded at full length there, reciting a Patent heretofore granted by the late Governor Lovelace, unto Robert Tallant, on 25 Feb. 1671, for 400 Acres of Land on the West side of Delaware River, and on the South-east side of Apoquimini Creek, and reciting divers mesne Assignments thereof down to Bezaliel Osborne; now Governor Andros, by virtue of his Commission and Authority from the Duke of York, ratifys, confirms and grants the said Premisses, unto the said Bezaliel Osborne in Fee, reserving as a Quit-Rent to the Duke, four Bushels of Wheat. This is the first Grant of Lands which we have, that was made by Governor Andros, and it happens to be entered at full length, and so shews the Form of his Grants; we have some Hundreds more of his Grants hereafter, but they are (as to many of them) very shortly recorded. This is New-York Records, No. 3. Fol. 9.

July 28.

A Letter dated in New-York, signed by M. Nicolls, and there said to be sent by the Governor's Order to Capt. Cantwell; as to Capt. Carr's Meadow and Land near the Town, now upon Sale, and in Dispute betwixt the Town and particular Persons, the Court is to make a Return thereof to the Governor, whether it was ever enclosed or improved, particularly since Capt. Carr had it; in the mean time it to remain as it was the last seven Years of the English Government, before the Dutch took the Place in July 1673: Upon which Return the Governor will give further Directions. Encloses the two special Warrants for Fabricius and Ogle; the other chief Ringleaders are to be bound over to the next General Court there. New-York Records, No. 1. Fol. 77.

Sept. 15.

From New-York Records, Minutes of the Governor and Council, Fabritius being ordered, by special Warrant, to make his Appearance before the Governor here, to answer a Complaint made against him by the High-Sheriff and Court at Newcastle, Ogle falling sick appeared not, it's ordered that Fabritius, in respect of his being guilty, and his former irregular Life, be suspended from exercising his Function as a Minister, or preaching any more within this Government, either in publick or privates. The Orders of the Court at Newcastle, for making the Dykes, to be confirmed; The Out-People to have like Commorage of the Meadow, adjoining to the Dykes they helped to make, as those of the Town. Captain Carr's Meadow having never been enclosed, nor purchased from the Indians, It is

ordered that the said Lands shall be purchased of the Idnian Proprietors in the Duke's Name,; in the mean time to remain Common, as it is. Ordered that the Block-house at Newcastle, be removed, and built on the Back-side of the Town, about the middle of it, at or near the Old Block-house, wherein there may be a Court-house and a Prison also. New-York Records, No. 1. Fol. 78.

Sept. 23.

An Indenture between Edmund Andros Esq; Governor and Lieutenant under the Duke of York, of all his Territories in America, for and on behalf of the Duke of the one Part, and Mamarakiekan, Auricktan, Sackoquewan, and Nanneckos, on behalf of themselves, as the true Sachems and lawful Indian Proprietors of the Lands after-mentioned, on the other Part. Whereby, in consideration of a certain sum of Wampum, and other Goods, mentioned in the Schedule, to them in hand paid, they grant, bargain and sell to Governor Andros, for and on behalf of the Duke of York,

All that Tract of Land, on the West side of Delaware River, beginning at a Creek next to Cold Spring, somewhat above Martinicom Island, about 8 or 9 Miles below the Falls, and as far above the said Falls as the other is below them, or further that way, as may be agreed on, to some remarkable Place for the more certain Bounds; As also, all the Islands in Delaware River, within the above mentioned Limits, both below and above the Falls (except only one Island called Peter Alrick's Island) together with all Lands, Soils, Meadows, Woods, Marshes, Rivers, Waters, &c., without any Reservation of the Herbage or Trees, or any thing growing or being thereon.

To hold to Governor Andros and his Successors, for and on behalf and to the Use and Behoof of the Duke of York, his Heirs and Assigns for ever. Which Deed is executed before 12 Christian Witnesses, of which Edmund Cantwell is one; and the Schedule enumerates a great Quantity of Goods paid for said Purchase. New-York Records, No. 1. Fol. 79.

Oct. 21.

Governor Andros's Letter from New-York to the Governor of Maryland, merely about some expected Quarrels with the Indians, and offering him his friendly Assistance. New York Records, No. 1. Fol. 81.

Nov. 5.

An Entry in the New-York Records, that the above-mentioned Indian Purchase Deed was then recorded, as it is at full length. New-York Records, No. 1. Fol. 79.

Nov. 5.

Three several Grants from Governor Andros. 1. To Thomas Spry of a Parcel of Land called Doctor's Commons, on the West Side of Delaware River, and on the South Side of St. George's Creek, containing 160 Acres, together with the Marshes thereunto, as by the Return of the Survey by Captain Edmund Cantwell, Quit-Rent 1 Bushel and half. 2. To James Crawford of a Parcel of Land called Barwick, on the West Side of Delaware Bay, on the South Side of St. George's Creek, and laid out for 210 Acres together with the Marshes thereunto, as by the same Surveyor's Survey, Quit-Rent 2 Bushels. 3. To Bernard Egberts of a Parcel of Land, called Smith's Hall, on the West Side of Delaware River, on the South Side of St. George's Creek, containing 300 Acres, as by Cantwell's Survey, Quit-Rents 3 Bushels. New-York Records, No. 3. Fol. 10.

Same Day.

Two more Grants from Governor Andros. 1. To Jacob Young for a Parcel of Land on the West Side of Delaware River, on the North Side of St. George's Creek, containing 1280 Acres, with the Marshes thereto, as by Cantwell's Survey, Quit-Rent 12 Bushels and 3 Pecks. 2. To Hermanus Wiltbank, of Land near to the Whorekill in Delaware Bay, lying upon Fish-Creek, containing 800 Acres, as by Cantwell's Survey, Quit-Rent 8 Bushels. New-York Records, No. 3. Fol. 11.

Same Day.

Two more Grants from Governor Andros. 1. To Henry Ward of a Neck of Land on West Side of Delaware River, between the Beaver Dam and Dragon Swamp, near to St. George's Creek, containing 446 Acres and $\frac{1}{2}$, with the Marshes thereto, as by Cantwell's Survey, Quit-Rent 4 Bushels and $\frac{1}{2}$. 2. To William Roods, of a Tract of Land at the Whorekill on the West Side of Delaware Bay, called Rehobah, lying upon Rehobah Bay, bounded on one Side by John Avery's Land, containing 600 Acres, as by Cantwell's Survey, Quit-Rent 6 Bushels. New-York Records, No. 3. Fol. 12.

NOTE—The first of those Grants is also at full Length recorded in Newcastle Records, No. 11. Fol. 18.

This last Grant, amongst many other Proofs, shews, the Whorekills was the Name of a District; for Rehobath Bay is at least 7 Miles from the Town of Whorekills or Lewis, and yet is said to be at the Whorekills.

1675. *Nov. 5.*

Three more Grants from Governor Andros. 1. To Hans Peterson, of Land on the West Side of Delaware River, in Skillpades-Kill or Creek extending out of Christiana Creek, containing 157 Acres and $\frac{1}{2}$, with the Marshes thereto, as by Cantwell's

Survey, Quit-Rent 1 Bushel and $\frac{1}{2}$. 2. To Charles Peterson, of Land, on the West Side of Delaware River, on the North Side of Verdrityes Hook, containing 266 Acres, with the Meadow or Marsh thereto, as by Cantwell's Survey, Quit-Rent 2 Bushels and $\frac{1}{2}$. 3. To George Moor, of Land called Winsor, on the West Side of Delaware River, on the South Side, of St. George's Creek, containing 280 Acres, with the Marshes thereto, Quit-Rent 2 Bushels and $\frac{1}{2}$. New-York Records, No. 3. Fol. 13.

Two more Grants from Governor Andros. 1. To Anne Wale of Land, called Chelsey, on the West Side of Delaware River, and on the South Side of St. George's Creek, containing 300 Acres, with the Marshes thereto, as by Cantwell's Survey, Quit-Rent 3 Bushels. 2. To John Ogle of Land, on the West Side of Delaware River, called Hampton, on the North Side of St. George's Creek, containing 300 Acres, as by Cantwell's Survey, Quit-Rent 3 Bushels. New-York Records, No. 3. Fol. 14.

NOTE—The last of these Grants is also recorded at full Length in Newcastle Records, No. 11. Fol. 19.

Same Day.

Two more Grants from Governor Andros. 1. To Morris Listen, of Land on the West Side of Delaware Bay, lying on a Fork of Cedar Creek, containing 150 Acres, as by Cantwell's Survey, Quit Rent 1 Bushel and $\frac{1}{2}$. 2. To Peter Bawcom and Richard Blinks, of Land on the West Side of Delaware Bay, called Stening, or Bawcom Briges Creek, containing 600 Acres, together with all Marshes thereto, as by Cantwell's Survey, Quit-Rent 6 Bushels. New-York Records, No. 3. Fol. 15.

Dec. 1.

Another Grant from Governor Andros, to Ephraim and Caspar Harman, of Land, called St. Augustine, on the West Side of Delaware River, being on the North Side of Apoquemini Creek, and on the South Side of St. Augustine's Creek, containing 400 Acres, as by Cantwell's Survey, Quit-Rent 4 Bushels. New-York Records, No. 3. Fol. 16.

NOTE—The same Grant recorded, at full Length, in New-castle Records, No. 11. Fol. 20.

Dec. 5.

Minutes of the Governor and Council taken from New-York Records. The Letter from Captain Edmund Cantwell being taken into Consideration, concerning the Arrival of Mr. Fenwick and others at Delaware, with their Pretences. Resolved, that Mr. Fenwick having no Order, (which if he had, ought to have been brought first and recorded here) he is not to be received as Owner of any Land in Delaware, but to be used

civilly, paying all Duties, as other the King's Subjects in those Parts: and if he, or any that come with him, desire Land to the Westward, that there be assigned them fitting Proportions, as to others, and due Return made of the Surveys: As to any Privilege, or Freedom of Customs, or Trading on the Eastern Shore, none to be allowed, in any case, to the smallest Vessel, Boat, or Person. The Magistrates and Chief Officers are to be very careful that there be no Abuse committed on the Eastern Shore, under any Pretence whatsoever, contrary to the above: As to Customs, Newcastle to pay but as New-York, two per Cent. &c. But, above the Town, or any other Place on the Bay or River, except Whorekill, to pay the Addition of 3 per Cent. as per Regulation. New-York Records, No. 1. Fol. 82.

NOTE—A Copy thereof, but signed Mat. Nicoll's Secretary, and expressly called Minutes of a Council held in New-York, is also entered in Newcastle Records, No. 11. Fol. 21.

Dec. 10.

Governor Andros's Letter from New-York to the Governor of Maryland, touching a War with the Indians which the Governor of Maryland was engaged in, and wherein the Susquehannah Indians were concern'd. New-York Records, No. 1. Fol. 83.

Dec. 10,

Governor Andros's Letter from New-York to Captain Cantwell. You are punctually to observe the Order I here send you, concerning Mr. Fenwick, and the Customs, as practised here, which I hope will satisfy all Persons; Mr. Dyre will send you the Rules you desire, for Entrys, &c. I am sorry you find the Indians in your Parts wavering, be just to them, I'll supply you with what is fit for a Garrison in your Town, at this Juncture, for Security of your Parts; and would have you take Order for removing the Blockhouse, about the middle of your Town, above it, into the Place I shewed you when there, so to command both Ends. New-York Records, No. 1. Fol. 83.

Decemb. 14.

Governor Andros's Commission dated at New York, authorising Casper Harman to fetch and bring in, from out of the Woods, in and about Delaware Bay, adjacent to Apoquemini and Landwerdin, within this Government, all wild and unmarked Cattle, Hogs and Horses, not having a known Owner; he bringing the same to the Chief Officer or Magistrate at Apoquemini, and paying one third Part or Value to his Royal Highness's Use, the other two thirds to be his for his Pain, and Trouble. This Commission to be in Force for one Year. New York Records, No. 1, Fol. 84.

Dec. 15.

Governor Andros's Grant dated in, and under the Seal of the Province of New York, whereby he grants in Fee to Peter Bayard, a parcel of Land called Bumbey's Hook, on the West side of Delaware Bay, on the Mouth of Duck Creek, containing 600 Acres, as by Cantwell's Survey, Quit-Rent reserved to the Duke 6 Bushels. This is recorded at full Length in Newcastle Records, No. 11. Fol. 22.

Jan. 12.

A renewed Execution, under the Hand and Seal of Governor Andros, dated at New York, recites that Jenffro Armegart Prince, of Upland in Delaware River, obtained a Judgment at the Assisses held in the City of New York in 1672, in the time of Governor Lovelace, against Andrew Carr and Persilla his Wife, Inhabitants in the said River, for a Sum, for which a special Warrant of Execution was also granted, but the same was not fully effected; at her Request that the former Execution may be renewed, the Governor in the King's Name, requires Captain Cantwell, Sheriff of Delaware, or his Deputy, to proceed according to the said Judgment, in what remains unexecuted. New York Records, No. 1. Fol. 85.

Jan. 15.

In the New York Records, a short Entry of a Grant from Governor Andros (but without a Date there) unto Percifell Wodersell and 4 others of Land on the Westward side of Delaware River, and on the North-West side of Black Bird Creek, containing 1200 Acres, as by Cantwell's Survey, Quit-Rent 12 Bushels. New York Records, No. 3, Fol. 47.

Jan 15.

The same Grant recorded at full length, in ——. New castle Records, No. 11. Fol. 23.

Jan. 15.

Another Grant from Governor Andros in New York, and under the Seal of that Province, to James Wallem, of a Lot of Ground below the Fort in the Town of Newcastle, Quit-Rent 1 Bushel. Newcastle Records, No. 11. Fol. 24.

NOTE—Another Entry of the last Grant in the New York Records, No 3. Fol. 49.

Jan. 15.

Another Grant from Governor Andros in New York, and under the Seal of that Province, to Henry Vanderburch of another Town-Lot, below the Fort, in the Town of Newcastle, Quit-Rent 1 Bushel. Newcastle Records, No. 11. Fol. 25.

Jan. 15.

Another Grant from Governor Andros in New York, and under the Seal of that Province, to John Scott, of a Tract of Land on the West side of Delaware River, at the first dividing of St. George's Creek, called Maidstone, containing 400 Acres, as by Cantwell's Survey, Quit-Rent 4 Bushels. Newcastle Records, No. 11. Fol. 26.

NOTE—Another Entry of the last Grant, in New York Records, No. 3. Fol. 51.

Jan. 15.

Another Grant from Governor Andros, dated at New York, and under the Seal of that Province, to John Edmondson, of Land, which had been formerly granted by Colonel Nicholls, the Duke's Governor, upon 1 Aug. 1668, to Thomas Woolaston and others, being in White Clay Kill, near unto Christiana Kill, in Delaware River, containing 800 Acres of Wood-Land, besides Valley, on which former Grant, a Quit-Rent of 8 Bushels was reserved, which being now by mesne Assignment come to John Edmonson, Governor Andros grants it to him in Fee, reserving the 8 Bushels Quit-Rent. Newcastle Records, No. 11. Fol. 27.

NOTE—This last is quite a new distinct, parcel of Land, the former Grant of it had never before been mentioned in our Evidence.

Jan. 15.

Another Grant from Governor Andros, dated at New York, and under the Seal of that Province, unto Olie Franson and two others, of a Tract of Land on the Westward side of Delaware River, about two Miles above Verdrietigys Hook, containing 700 Acres as by Cantwell's Survey, 300 Acres of which were before granted to them by Patent of 7 April 1673, but the other 400 Acres are new Land, Quit-Rent 7 Bushels. Newcastle Records, No. 11. Fol. 28.

NOTE—An Entry of this last Grant is also in——. New York Records, No. 3. Fol. 54.

Jan. 15.

Another Grant from Governor Andros, dated in New-York, and under the Seal of that Province, to Francis Wittwell of a Parcel of Land on the West side of Delaware River, called Brooshey, on the West side of the South West Branch of Duck Creek, containing 400 Acres as by Cantwell's Survey, Quit Rent 4 Bushels. Kent County Records, No. 14. Fol. 3.

NOTE—Another Entry of the last Grant is also in——. New York Records, No. 3. Fol. 52.

Jan. 15.

Another Grant from Governor Andros dated in New-York, and under the Seal of that Province, to William Tom in Fee, of a Tract of Land upon the Whorekill in Delaware Bay, being formerly the Land of Peter Alricks, near Pagan Creek, containing 132, Acres, as by Cantwell's Survey, Quit-Rent 1 Bushel. Sussex County Records, No. 17. Fol. 3.

NOTE—Another Entry of the last Grant is also in——. New York Records, No. 3. Fol. 54.

Jan. 15.

Another Grant from Governor Andros, dated in New York, and under the Seal of that Province, unto Simon Patten, of a Tract of Land at the Whorekill, upon the West side of Delaware Bay, by Pagans Creek, containing 50 Acres, as by Cantwell's Survey, Quit Rent half a Bushel. Sussex County Records, No. 17. Fol. 4.

Jan. 15.

Another Grant from Governor Andros, dated in New York, and under the Seal of that Province, to George Young, of a Tract of Land, near unto the Whorekill, in Delaware Bay, called Young's Hope, containing 300 Acres, as by Cantwell's Survey, Quit-Rent 3 Bushels of Wheat. Sussex County Records, No. 17. Fol. 5.

NOTE—Another Entry of the last Grant is in——. New York Records, No. 3. Fol. 53.

Feb. 21.

Governor Andros's Commission dated in, and under the Seal of, New York, appointing 5 of the Justices of the Court at Newcastle, and 5 of the Justices of Upland Court, and Delaware River, a Court of Oyer and Terminer, for Trial of Sybrant Johnson and his Accomplices, for a Rape which had been committed, on Ann Jurians, within the Jurisdiction of the Court at Newcastle. New York Records, No. 1. Fol. 86.

Same Day or Month.

An Entry in the New York Records of a Grant by Governor Andros, to William Davids, of Land on the Westward side of Delaware Bay, called Roaseberry, a little below the Indian Bridge, containing 300 Acres, as by Survey, Quit-Rent 3 Bushels. New York Records, No. 3. Fol. 8.

1676. *Mar. 25.*

From New-York Records, Three several Grants from Governor Andros. 1. To Hendrick Coleman and Peter Patcon, of Land, on West-side of Delaware River, and on North-west side of Millcreek, containing 100 Acres as by Survey, Quit-Rent 1

Bushels: 2. To Jurian Hartstielder, of Land on the West side of Delaware River, on the Southwest side of Cohocktrincks Creek, containing 350 Acres, Quit-Rent three Bushels and a Half. 3. To Henry Allison, of Land called Tilmouth Haven, on the West side of Delaware Bay, and on the South-side of Fish Creek, containing 400 Acres as by Survey, Quit-Rent four Bushels. New-York Records, No. 3. Fol. 17.

Same Day.

From New-York Records, Three more Grants from Governor Andros, 1. To Thomas Williams, of Land on the West side of Delaware Bay, and on North-west side of Baucum Briggs Creek, containing 200 Acres as by Survey, Quit-Rent 2 Bushels. 2. To Robert Tallent, of Land called Poplar-Hill, on the West side of Delaware Bay, and on North side of Hangman's Creek, containing 200 Acres as by Survey, Quit-Rent 2 Bushels. 3. To John Street, of Land called the Chops, on the West side of Delaware, and at the Head of Hangman's Creek, containing 200 Acres as by Survey, Quit-Rent 2 Bushels. New-York Records, No. 3. Fol. 18.

Same Day.

From the Records in Newcastle County. Twelve several Grants, from Governor Andros, dated in, and under the Seal of New-York, recorded at full Length, all granted by virtue of the Duke's Commission to him, and reserving the Quit-Rents to the Duke, viz. 1. To Peter Thomasson in Fee, of lands on the West side of Delaware River, and on White-clay Creek, being a Branch of Christianna Creek, above the Falls thereof, containing 220 Acres, Quit-Rent 2 Bushels. 2. To William Sharpe in Fee, of Land called Canaan, on the West side of Delaware Bay, and on the North side of Duck Creek, containing 500 Acres as by Cantwell's Survey, Quit-Rent 5 Bushels. 3. To Walraven Johnson de Fox, and another in Fee, of Land on the West side of Delaware River, near the upper End of Bread and Cheese Island, and on the North side of White-clay Creek, containing 570 Acres as by Survey, Quit-Rent 5 Bushels. 4. To John Nomers in Fee, of Land, on the West-side of Delaware River, on both sides of White clay Creek, being a Branch of Christiana Creek, containing 340 Acres as by Survey, Quit Rent 3 Bushels and a Peck. 5. To Edmund Cantwell in Fee, of Land on the West side of Delaware River, nigh the Head of Apoquiminick Creek, containing 800 Acres, 400 of which was granted to William Smiler, and by him forfeited to his Majesty, by the late Governor Lovelace granted to the said Cantwell, and the other 400 laid out for the said Cantwell, Quit-Rent reserved to the Duke 8 Bushels. 6. To Cas-

parus Harman in Fee of Land, called Good Neighbourhood, on the West side of Delaware River, and on the North-east side of St. Augustine's Creek, containing 330 Acres, as by Survey, Quit-Rent 3 Bushels. 7. To Edmund Cantwell in Fee, of Land on West side of Delaware Bay in Apoquiniminick Creek, beginning from the Green Hook to Sassatraz-Kill, containing 900 Acres, which had on 17 June 1671, been granted by Governor Lovelace to Lucas Abell and others, and since purchased by Cantwell, Quit-Rent 9 Bushels. 8. To John Mall in Fee, of a Lot in Newcastle Town, Quit-Rent 1 Bushel. 9. To Robert Tallent in Fee of Land called Poplar-Hill, on the West side of Delaware Bay, and on North side of Hangman's Creek, containing 200 Acres as by Survey, Quit-Rent 2 Bushels. 10. To John Street in Fee, of Land called the Chops, on the West side of Delaware Bay, on the Head of Hangman's Creek, containing 200 Acres as by Survey, Quit-Rent 2 Bushels. 11. To John Barker in Fee, of Land called Calton, on the West side of Delaware River, and on the North side of Blackbirds Creek, containing 220 Acres as by Survey, Quit-Rent 2 Bushels. And 12. To Samuel Land in Fee, of a Lot in the Town of Newcastle in Delaware River, in Warmoes Street, bounded upon the Minquaes Street, Quit-Rent 1 Bushel. Records from Newcastle County, No. 11. Folis 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40.

NOTE—As the 12 foregoing Grants are taken only from Newcastle Records (tho' long before Mr. Penn had any thing to do with that Country) so it may be necessary to mention, that we have short Entries of seven of these Grants from New York Records also, viz. The first of the last-mentioned 12 Grants is in New-York Records, No 3. Fol. 27; and the second, in the same Book, Fol. 22; the third is in the same Book, Fol. 31; the fourth is in the same Book, Fol. 30; the sixth is in the same Book, Fol. 60; the eleventh is in the same Book, Fol. 61; and the twelfth is in the same New York Book of Records, No. 3. Fol. 31.

Same Day.

From the Records in Kent County, Two more Grants, from Governor Andros, dated in, and under the Seal, of New York, recorded at full Length, and both granted by Virtue of the Duke's Commission to him, and reserving the Quit Rents to the Duke, viz. 1. To Thomas Williams in Fee of Land on the West Side of Delaware Bay, and on North-west side of Beaucom Briggs Creek, containing 200 Acres as by Survey, Quit Rent 2 Bushels. 2. To William Simson, of Land on the West side of Delaware Bay, and on the North side of Little-Creek, contain-

ing 400 Acres, as by Cantwell's Survey, Quit-Rent 4 Bushels. Records from Kent County, No. 14. Fol. 4 & 5.

NOTE—The last of these Grants is also entered in ———. New-York Records, No. 3. Fol. 23.

1676. *March 25.*

From the Records in Sussex County, one more Grant, from Governor Andros, dated in, and under the Seal of New York, recorded at full Length, granted by Virtue of the Duke's Commission to him, unto Abraham Clement, and another in Fee, of Land, upon the Whorekill, near Delaware Bay, by Potters Creek, and Pagans Creek, containing 600 Acres, as by Cantwell's Survey. Quit Rent, six Bushels reserved to the Duke. Records from Sussex County, No. 17. Fol. 6.

May 25.

Governor Andros' Order, dated in New York, being an Injunction granted by him, upon a Petition in Equity presented to him; to stay Execution, upon a Judgment obtained at Law, in the Courts at Newcastle, by William Tom against Hendrick Janson. The Governor orders, that, on Janson's giving Security to make good his Complaint, Execution be suspended, and that all the Proceedings, Writings, and Proofs, be transmitted to New York, for a final Determination in Equity. New York Records, No. 1. Fol. 87.

June 23.

Grant from Governor Andros in New York, to William Stevens, of Land called York, on the West Side of Delaware Bay, above Little Creek, containing 600 Acres, as by Cantwell's Survey. Quit Rent, six Bushels. New York Records, No. 3. Fol. 19.

June 24.

Two more Grants from Governor Andros, 1. To Edward Southeran, of Land called St. Giles's, on the West Side of Delaware Bay, West from the Whorekill, about a Mile from Pagans Creek, containing 196 Acres, as by Survey. Quit Rent, two Bushels. 2. To William Arundel, of Land on the West Side of Delaware Bay, about three Miles South West from the Whorekills, in the Woods, containing 304 Acres, as by Survey. Quit Rent, three Bushels. New York Records, No. 3. Fol. 29.

NOTE—The first of those two last Grants is entered, at full Length, in the Records from Sussex County, No. 17. Fol. 7.

June 30.

Governor Andros's Grant to Edward Bodell, of Land on the West Side of Delaware Bay, in the Woods, South South East

from the Whorekill, about three Miles, near to Green Branch, containing 300 Acres of Land, as by Survey. Quit Rent, three Bushels. New York Records, No. 3. Fol. 29.

July 15.

Governor Andros's Grant to John Moll, for Land called the Exchange, on the West Side of Delaware River, between it, and the great Dragon Swamp, laid out for 1000 Acres, 600 whereof were formerly granted by Patent to William Currer, and another, whose Right Moll is invested with, and the other 400 are new Land. Quit Rent, 10 Bushels. New York Records, No. 1. Fol. 88.

July 26.

From New York Records, Minutes of the Governor and Council, signed by Governor Andros, on the Petitions of Laurence Caroli of Delaware, to the Governor, one concerning a Mare, the other concerning selling strong Liquors to the Indians, in both which Matters Caroli was cast at the Court of Newcastle, and appealed hither for Relief; Ordered, that the Petitions, Proceedings, Judgment of Court, and several Attestations, delivered in here, be all transmitted to the Court at Newcastle, who are to return them back, with their Answer, to the Governor, and in the mean time, that Execution be stopt. Upon the Petition of Peter Gronendyke of the Whorekill, complaining of wrong done him by the Court at the Whorekill, in a Suit between him and Smith for some Tobacco, where the Petitioner was cast, and the President of the Court, and six of seven of the Jury, acknowledged their Proceedings erroneous, and desired their Verdict might be annulled, and yet the President gave out afterwards Execution against the Petitioner; it is ordered, on the Petitioner's giving Security, that the President of the Court, some of the Jury, and the Prosecutor, shall all make their personal Appearance at the next General Court of Assize, to be held in this City, in October next, to answer in this Behalf. Another Petition of Helmanus Wiltbank, referred to the Court at Whorekill to take Order in, with all just Favour to the Petitioner according to Law, and make Report to the Governor. New York Records, No. 1. Fol. 88.

July 28.

Minutes of the Governor and Council, from New York Records, Resolution to write to Captain Cantwell at Delaware, to endeavour to make up a Contest which the Susquehanno Indians had with Maryland, and to acquaint the Governor of Maryland thereof. Also, upon a Petition of the Widow of Hans Block of Newcastle, that of late the Commons or Woods have been

enclosed by a Fence towards her Land, so that she is debarred of the Liberty she many Years heretofore had, of commoning her Cattie, ordered, that there shall be a convenient Out-drift for her Cattle. New York Records, No. 1. Fol. 89.

Aug. 10.

The Governor's Pass, dated in New York, for John Turcoat, a Frenchman belonging to this Government, with four or five of his Countrymen, to pass towards Delaware River, or Bay, and the South Parts thereof, being intended to hunt that way, and to return again. New York Records, No. 1. Fol. 89.

Aug. 11.

From the New York Records, Minutes of Council to check Captain Cantwell for raising so rash an Alarm there, but nevertheless to enquire the Meaning of the Susquehannos coming in. New York Records, No. 1. Fol. 89.

Sept. 15.

From the New York Records, Minutes of Council, on a Complaint made by Captain Hans Jurienson, that Captain Edmund Cantwell abused and struck him in his own House; upon Examination and Hearing of both Parties, ordered, that Captain Cantwell shall pay 200 Guilders Fine to the King, and both Parties to lay by all Animosities for the future, but it does not clearly express where this Assault was. New York Records, No. 1. Fol. 90.

Same Day.

A Grant from Governor Andros to Walter Dickinson, of two Parcels of Land, each of 400 Acres, on the West Side of Delaware Bay, and on the North East Side of St. Jones Creek, being about a Mile from Murder Creek, or above Murder Creek. Quit Rent, eight Bushels. New York Records, No. 1. Fol. 90.

Sept. 23.

Three several Commissions, granted by Governor Andros, all dated in New York. 1. To Captain John Collier, to be Sub-collector of all his Majesty's Customs of Newcastle in Delaware, and Receiver of the Quit Rents, or other his Royal Highness's Revenue there, together with the River and Bay, wherein he is to act pursuant to Law, and his Royal Highness's Orders for this Government, and to observe such Directions as shall be received from Governor Andros. 2. In his Majesty's Name appointing six Persons to be Justices of the Peace in the Jurisdiction of Delaware River, and Dependencies, any three of them to be a Court of Judicature, for one Year. 3. And in his Majesty's Name appointing six Persons to be Justices of Peace in the Jurisdiction of Newcastle, and Dependencies, any three

of them to be a Court of Judicature, for one Year. New York Records, No. 1. Fol. 91.

Same Day.

Two more Commissions from Governor Andros, dated in New York. 1. Whereby he, in Virtue of the Duke's Authority, appoints Ephraim Hermans to be Clerk of the Court of Newcastle in Delaware, and also of the Court of Upland in the River. 2. He also, in Virtue of the Duke's Authority, appoints Captain John Collier to be Commander in Delaware River and Bay, to take Care that the Militia, in the several Places, be well armed, duly exercised, and kept in good Discipline, and the Officers and Soldiers are required to obey you as their Commander, and you are to observe such Orders as you shall receive from me, according to the Rules and Discipline of War. New York Records, No. 1. Fol. 92.

NOTE—This last Commission to Captain Collier is recorded in Records from Newcastle County, No. 11. Fol. 41. And the former to Hermans is recorded in Newcastle Records, No. 11. Fol. 42.

Same Day.

Governor Andros's Instructions to Captain John Collier, dated in New York, to go to Maryland, either from the Whore-kill, or from Delaware, about making up a Difference which Maryland had with the Susquehannah Indians; then to return to Newcastle. Instruction 4. To prevent all Interlopers, or irregular Traders, contrary to Law, and the Privileges, and Inhabitants of this City and Newcastle. Instruction 5. To keep due Accounts of all Things belonging to the Customs, as also of all other publick Revenues in the River and Bay, and return an Account thereof every three Months. New York Records, No. 1. Fol. 92.

Sept. 25.

Governor Andros's Letter to the Deputy Governor of Maryland, advising him to a Friendship with the Susquehanno Indians. New York Records, No. 1. Fol. 93.

Same Day.

Governor Andros's special Warrant against Major Fenwick, dated in New York, but directed to Captain Edmund Cantwell, Sheriff of Delaware, to execute; recites, that Major John Fenwick, now living at the East Side of Delaware River, pretends to be Proprietor of that Side, [viz. in New Jersey] and has acted accordingly, granting Lands, dispossessing Persons, selling their Lands, arrogating Power of Judicature, and giving out Licences for distilling, contrary to the Order settled

in the River, whereby he has inveigled some Persons from other Parts, and distracts the Minds of the Inhabitants throughout the whole River and Bay, not having any lawful Power or Authority; you are therefore to repair over the River to the said Fenwick, and all other Places on that Side, to inform yourself of the Truth of the said Particulars, and to forewarn any such of the Danger and Premunire they incur; and, if Fenwick has so acted, you are to summon him, in his Majesty's Name, to appear, without Delay, to answer the same before me, and my Council, in this Place, at his utmost Peril; and, in case of Opposition all his Majesty's Subjects are required to aid and assist you. New York Records, No. 1. Fol. 93.

Sept. 25.

Governor Andros's Instructions given to the Justices at Newcastle, dated in New-York: They recite that, last Year, upon his being at Delaware, the Inhabitants represented that his Predecessor Governor Lovelace began to make a Regulation for the due Administration of Justice, according to the Laws of this Government; pursuant whereto the present Governor appointed some Magistrates, and made some Rules for their Proceedings the Year ensuing, or till further Order; now, by the Advice of his Council, he makes some Alteration, and they are to remain and be in Force in Form following. 1. That the Book of Laws, established by the Duke, and practised in New-York, and Dependencies, be in Force and Practice in this River and Precinets; except the Militia, now ordered to remain in the King, and except such as don't relate to that River, &c. 2. That there be three Courts held, in the several Parts of the River, as formerly, viz. One in Newcastle, one above, at Uplands, and another below at the Whorekills. 3. The Courts to consist of the Justice, three to be a Quorum, and to have Power of a Court of Sessions, and decide all Matters under 20*l.* without Appeal; above 20*l.* and for Crime, extending to Life, Limb or Banishment, to admit Appeal to the Court of Assize. 4. All small Matters, under 5*l.* may be determined by the Court, without a Jury, as also all Matters of Equity. 5. The Court for Newcastle to be held Monthly, those for Uplands and the Whorekill quarterly, and he names the fixed Days they are to be held on. 6. The Courts may make By-Laws, not repugnant to the Laws of the Government, to be good for a Year, they giving an Account thereof to the Governor by first Opportunity. 7. The Courts to regulate the Court and Officers Fees, but not to exceed the Rates in the Book of Laws. 8. To be a High-Sheriff for the Town of Newcastle, River and Bay, and he to make an Undersheriff, to be approved by the Court, and the Sheriff is to act in the Execution

of the Laws, but not as a Justice of Peace or Magistrate. 9. That there be fitting Books provided for the Records, all judicial Proceedings to be fairly entered therein, as also publick Orders from the Governors. 10. That each Court recommend to the Governor, for his Approbation, a fit Person for Clerk, in whose hands the Records are to be kept. 11. That all Writs, Warrants, and Proceedings at Law, shall be in the King's Name, it having been practised in the Government ever since the first Writing of the Law-Book, and it being the Duke's special Pleasure and Order. 12. No Rates to be imposed, or Levies made, within the Town of Newcastle, River or Bay, without the Governor's Approbation, and all Accounts of Receipts and Disbursements on Rates, to be sent to the Governor for his Allowance, until which, not to be a sufficient Discharge; Any Person desiring Land may apply to the Court, in whose Bounds it is, who are to sit Monthly, or oftner, which Certificate shall be a sufficient Warrant to the Surveyor to survey it and the Certificate and Surveyor's Return to be sent to New-York, for the Governor's Approbation. Newcastle Records, No. 11. Fol. 42.

NOTE—The above is called Instructions, but is, in effect, something like a Charter.

Sept. 27.

The Governor's Dedimus, dated in New-York, authorising Captain John Collier and Captain Edmund Cantwell, to give the Oaths to the new Magistrates at Newcastle, and up the River at Delaware, and also at the Whorekill. Newcastle Records, No. 11. Fol. 42.

Oct. 10.

An Entry in Newcastle Records that this Day the new Justices, and Clerk, were sworn and establish'd in their Places by Captains Collier and Cantwell, and the several new Commissions granted by the Governor to Captain Collier, as also to the Justices, with their Instructions, and the Commission to the Clerk being openly read, it was ordered that the same should be recorded; and accordingly they all immediately follow that Entry. Newcastle Records, No. 11. Fol. 42.

Oct. 26.

Two several Commissions, under Governor Andros's Hand and Seal, dated in New-York. 1. In his Majesty's Name appointing five Persons, viz. Helmanus Wiltbank, Edward Southorne, Alexander Molestien, John King, and Paul Mash, Justices of the Peace at the Whorekill and Dependencies, and any three to be a Court of Judicature. To continue one Year, or till
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further Order. 2. By vertue of the King's Letters Patent, and the Commission to the Governor given by the Duke, The Governor appoints John Avery to be Captain of the Foot Company of the Militia at the Whorekill; with a short Entry that the like [Commissions] were given to a Lieutenant, and to John Roads Ensign. New-York Records, No. 1. Fol. 94.

Nor. 8.

The whole Bench of Justices at Newcastle wrote a Letter to the Governor, praying him to send them (as he had promised) the Duke's Law-Book, corrected of all such Laws and Orders as did not concern that River; complaining that some of those who belonged to the Company of Militia of that Town lived three or four Miles distant, and it was inconvenient to them to do Watch in the Fort; and as this is a Frontier Place, it will be to the Ease of the People, and Reputation of the Province, to have a small Number of Soldiers kept, as in the time of the Governor's Predecessors, or several would rather incline to pay them than watch themselves: They pray the Governor to give them a lesser Seal for the Office: They have no Prison, desire the Governor's Order to erect one, and to appoint what Allowance Prisoners shall have, and by whom to be paid; The last Court made an Order to allow 40 Guilders for every Wolf's-Head, to be levied from the Publick, they desire the Governor's Approbation thereof. They desire the Governor's Order to empower them to raise a Levy for defraying of small publick Charges; They desire the Governor's Order, that Fines imposed by the Court may henceforth, be converted for the publick Charges, in repairing the Fort, building a Prison, &c. Chiefly, they tell the Governor, that in case Sloops and Vessels be, henceforth, permitted to go up and down the River, trading with the People, and getting all the ready and best Pay, as they now do, this Place will, in short time, be deserted and come to nothing, which, then, will make this River as bad as Maryland; wherefore, they entreat the Governor to prohibit the going up of all Vessels, as it was in his Predecessors time; and that this may be the only Place of Lading, Unloading, and keeping of Stores for all Merchants; and pray the Governor to order a publick Weigh-house and Store-house to be erected. Newcastle Records, No. 11. Fol. 44.

Nor. 20.

From the New-York Records, Minutes of the Governor and Council; several Letters about Major John Fenwick's Actings in New-Jersey, on the East-side of Delaware River, by his granting Patents, refusing to obey the Governor's special War rant, &c., being read; and it importing the King's Service and

the Good and Quiet of the Inhabitants of those Parts. Resolved that he be sent for, and, if there be occasion, that the Commander and Magistrates at Delaware do use Force for seizing and sending him hither; and as to one Jaquet, who has been dispossessed of Land on the East-side of Delaware River by Major Fenwick, that the Court do repossess him thereof and if need be the Commander to assist them. New-York Records, No. 1. Fol. 95.

Nov. 23.

Governor Andros's Letter dated from New-York, and directed for the Commander and Court at Newcastle, in answer to theirs of the 8th Instant before stated, wherein he, having taken the Advice of his Councils, sends them Orders to seize Major Fenwick, and to repossess Jaquet as above, and then answers their own Desires, by telling them he will send them one of the Duke's Law-Books, that the Inhabitants of the Town of Newcastle, and within a Mile thereof, are to keep Watch, but none to be obliged to come to it further: The Proposal about Soldiers to be further considered; Care will be taken for a publick Seal against next Year; You may cause a Prison to be built in the Fort: For Allowance to Prisoners, you are to be directed by the Law-Book; I confirm the Order about killing Wolves, for the present Year: I grant the Fines to the Court, for this Year, and the two past Years, for publick Uses, and the Sheriff and Receivers to pay the same, and the Court is to send the Governor an Account how they are disposed of: The Sheriff is to have 5s. in the Pound for collecting the same and other Charges; towards the further defraying of publick Charges, in the Town of Newcastle, as also up the River, and in the Bay, a Levy allowed to be made of a Penny in the Pound upon every Man's Estate, to be taxed by indifferent Persons to be appointed by the Court, but an Account to be given hither to the Governor; The former Orders to be duely observed, as heretofore, and care to be taken that no Vessels go up the River above Newcastle to trade; a Weigh-house is allowed in the Town of Newcastle, for the which you are, then, to appoint an Officer, to be sworn thereto. Newcastle Records, No. 11. Fol. 46.

1676. Dec. 8.

From Newcastle Records. The Orders of the Court at Newcastle, consisting of the Commander and Justices; The Commander informing them that he had sent to and been with Major Fenwick, over at his own House, who refused to obey the Governor's special Warrant, and stood upon his Defence, saying, the Governor of New York had nothing to do with him, and he would obey nothing, but what should come

from the King, or the Duke, and threatened any one to take him; the Court comes to a Resolution that Force be used, and that Fenwick be taken, and sent to York to the Governor. Newcastle Records, No. 11. Fol. 48.

Same Day.

And accordingly by a Warrant of the same Day, dated at Newcastle in Delaware, and signed by Captain Collier and the Justices, as the Commander, and Court at Newcastle in Delaware, they appoint 3 Persons, of which one was the Under-Sheriff, to levy 12 Soldiers out of any the Militia of this River, and repair to Fenwick's House, and to bring him by Force before us to this Town of Newcastle, and to pull down, break, burn or destroy the House for the apprehending of him; and in case of Resistance to fire upon him, or his, and if Fenwick or others resisting shall be killed, you are hereby discharged and held innocent, as being done in pursuance of the Duke's Lieutenant's Orders, and of us, by the Governor's Order recommended. Newcastle Records, No. 11. Fol. 49.

Decemb. 16.

From the New York Records. Governor Andros's Warrant, signed in New York, directed to the Sheriff of New York, commanding to take into his Custody, and safely keep, in order to a legal Trial, John Fenwick, sent a Prisoner hither from Delaware, for presuming to act as a Proprietor and Supreme Magistrate, without any, and even refractory to, lawful Authority. New York Records, No. 1. Fol. 93.

Jan. 2.

At a Court held at Newcastle before the Commander and Justices, Four several Families petitioned for Warrants, to take up 250 Acres of Land for each Family, their Petitions are granted, provided they settle according to the Governor's Orders, and the there following Warrants were given to each of the said Persons, directed to Captain Cantwell the Surveyor, to survey, for each Family 250 Acres on the West side of Delaware River or Bay, within the Limits of that Court, and to make returns of the said Surveys to the Court, for to be sent to New York, in order that Patents may be had. Newcastle Records, No. 11. Fol. 50.

Feb. 8.

The Court at Newcastle write a letter to Governor Andros at New York, making request of many further Powers; They tell him, Order is given for erecting a Weigh-house and Prison: as to the Watching, by those who live within a mile of the Town, they say that some of those at Swanwick will fall

within the Mile, and must come, when their next door neighbors, without the Mile, will be excused, which will breed Discontent, therefore desire the Governor's further Order therein; As to the Levy of the Penny per Pound which your Honour allowed, the People live so distant, and their estates so inconsiderable, that we can find no way to discover the Value or if discovered, to make it valuable to receive; but if your Honour would allow of a Poll-Levy, as in Virginia and Maryland, it will be easier made and received. Pray remember our former Petitions about Soldiers, the Law Book and Seal; we send you a copy of the Fines; we desire your Order and Approbation about the following Particulars. 1. That you will impower the Commander Captain Collier, or the Court, to prove Wills, and grant Letters of Administration, with the Fees, for the Estates of most People in these Parts are so inconsiderable, that the Charge and Expence of going to your Honour at New York to obtain the same, is much to their Hindrance. Pray the Governor either to appoint a Vendue-Master in the River, or else to impower the Court to do it; and that the Valley above the Town, which was late Captain John Carr's, and was given by the Governor to the Town for a Common, may be a stinted Common; that an Order may be set forth in the River and Bay, forbidding all Persons to lend Vessels to any Stranger to go over to the East side of this River, or Servants, without a Ticket from the Magistrates, under a Penalty; for if this Order be not made, you'll please to consider that when the Alteration of Government cometh on the other side, [Note, the Duke of York had, before this time, granted New Jersey, which was on the other side, to the Lords Proprietors] we shall not be able to keep any servants on this side; and lastly to admit of a General Court, or Meeting, of all the Justices, as heretofore, if but for making up the Levies, collecting of General Revenues, and other publick and general Affairs; we are ready to obey your Honour's Orders, and to use all Endeavours for the Advancement of the People over whom your Honour has put us, and are your most humble Subjects and Servants. Newcastle Records, No. 11. Fol. 51.

1676. *Same Day or Month.*

From the New York Records. Two Grants from Governor Andros. 1. To John Woodhus, of Land called Would have more, on West side of Delaware Bay, and on North side of Duck Creek in the middle Branch of the said Creek, containing 400 Acres as by Survey, Quit-Rent 4 Bushels. 2. To Morris Lester of Land on West side of Delaware Bay, and on the North side of Duck Creek in the middle Branch of said Creek.

next to Woodhus's, containing 400 Acres, Quit-Rent, four Bushels. New York Records, No. 3. Fol. 47.

1677. *Apr.* 6.

From the New York Records, Minutes of Council in these short Words only, Three Months Liberty given to any Sloop or Vessel to go up the River above Newcastle, to fetch old Debts. New York Records, No. 1. Fol. 96.

Same Day.

Governor Andros's Letter or Orders, signed by him at New York, and countersigned by Matthias Nicolls Secretary, in Answer to the Proposals from the Court at Newcastle of the 8th of February last; None to watch or ward in the Town or Fort but such as live in or near the Town, unless on Alarms or extraordinary Occasions; Levys to be laid by the Poll as usually; a Law-book shall be sent; the past and next Years Fines granted for publick Charges, so to lessen the Rate; the several Courts may, at a Sessions, take Proofs and Security, and grant Administration of Wills, but, if above 20l. to remit the same here to the Secretary's Office to be recorded: The Court to recommend one for Vendu Master. The Fees to be 6 per Cent. besides the Cryer, and no other Charges; the Commons to be regulated by the Court, till further Order; all Persons in Delaware River, or Bay, leaving the Government, to set up their Names, where they live, and in Newcastle, and in this City, according to Custom, in Default thereof, any assisting their Departure, to be liable to the Penalty; Liberty is granted for the Sloops, &c., going up the River, as formerly, for this Year's Effects, or former Debts; five Guns, 30 Hoes, and one Anchor of Rum, the Remainder of the Pay for the Land at the Falls, to be forthwith paid the Indians; the Remaining Part of the Land, betwixt the old and new Purchase, as also the Island called Peter Alricks, or so much as is not already purchased, and the Indians will part with, to be bought of them; for which Captain Israel Helm is to enquire for the Owners, and if they'll be reasonable to bring them to the Commander and Court at Newcastle for concluding a Bargain thereof. Newcastle Records, No. 11. Fol. 53.

May 1.

From New York Records, Minutes of Council, on a Letter from Newcastle about Mrs. Block's being debarred of her Out-drift for Cattle. Resolved a convenient Out-drift to be allowed according to Law, as by former Order of Council. New York Records, No. 1. Fol. 96.

June 8.

From Newcastle Records, at a Meeting of the Commander and

Justices there, they read in Court the Governor's Answer dated the 6th of April, and entered the same, and having deliberated thereon, writ an Answer thereto to the Governor; As to Watch and Ward, they say none live near the Town but at Swanwike, and if they are exempted, most Part of the Town will fly thither; therefore intreat the Governor to furnish them with a small Number of Soldiers to watch the Fort; As the Governor has admitted of a Levy by the Poll, we find that cannot be laid without a General Meeting, or High Court, of all the Justices once a Year, we desire therefore, as we did before, that the Governor will take it into Consideration, and that such Meeting or General Court may begin in September next; For Treasurer we appoint John Moll, and desire the Governor to nominate the Treasurer's Fees: Pray don't forget the Lawbook, there is great Occasion for the same; we thank the Governor for the gracious Act of granting the Fines for lessening the Levy, but it will be difficult to collect, unless the Governor sends Soldiers to assist the Sheriff in the execution thereof: As to Letters of Administration we'll follow the Governor's Instructions. We nominate Ephraim Herman for Vendu Master, but it would be convenient to raise the Sallary to above 6 per Cent. As to Persons departing without a Pass, we shall endeavour to observe the Governor's Order; as to the Liberty for Sloops to go up the River, to receive former Debts, we suppose they will never be without that Pretence. Newcastle Records, No. 11. Fol. 54.

June 23.

From New York Records. An Order signed by the Governor at New-York, that Weights, &c. should be according to former Custom and Practice, unless otherwise determined by Law published. New York Records, No. 1. Fol. 96.

July 6.

An Entry in the New York Records, that, upon an Order of Court at the Whorekill, in the Case of William Hamilton, concerning Weights, referred to the Governor, the there following, (but here foregoing) Order was made. New York Records, No. 1. Fol. 96.

July 27.

From New York Records, several Judicial Acts of the Council. Mrs. Block claims a Way for Out-drift of her Cattle, through a Piece of Ground near Newcastle in Delaware, now in Tenure of Cantwell and de Haes, for which he alledges Custom for above 10 Years; Hayes answers, whilst it lay unimproved an Out-drift was suffered, but it now being in Fence, desires to enjoy the Benefit of his Grant; and Mrs. Block having nothing

to produce to shew her Right, Ordered that the Case be referred to be heard and determined at the next Court at Newcastle, reserving Liberty of Appeal according to Law; Also in the Case between Walter Wharton and Edmund Cantwell, Ordered that Wharton give Security to make good his Allegation, and Cantwell to answer his Proceedings and produce his Authority. New York Records, No. 1. Fol. 96.

July 28.

The Governor's Order signed in New York, upon Request of Hans Peterson, concerning several Judgments of the Courts of Newcastle and Upland in Delaware, in a Case between Peterson and Carolus about a Mare, the Jurys brought in several Verdicts, and the Court gave different Judgments, and it not appearing by any Testimony what Mare was in Difference, I order that the Executions in the said Matter be suspended, and a full Account of all said Proceeding, in both Courts, be sent to me: and this Order is accordingly directed to the Courts of Newcastle and Upland, and all Officers in Delaware whom it may concern. New York Records, No. 1. Fol 96.

July 28.

Governor Andros from New York, writes a Letter to Captain John Collier Commander at Delaware, that he finds the Commander goes to, and sits as Judge in Courts: orders him to forbear doing so, to act according to his known Authority, and in no Case to go to Court. New York Records, No. 1. Fol. 96.

Aug. 13.

From New York Records, four several Warrants signed by the Governor there, by Vertue of Authority derived to him under the Duke, appointing 1. Captain Christopher Billop to be Sub-Collector of the Customs of Delaware River, to observe the Acts of Trade, make Seisures, &c. and to observe such Orders as he shall receive from the Chief Collector, or principal Officers of the Customs here, and Superiors. Newcastle to be the only Port for all Entries and Clearings. 2. Ephraim Herman to be Clerk of the Permits, Entrys, and Clearings for all Duties of Customs in Delaware River, and to receive the King's or Duke's thirds of any Forfeitures. 3. Requiring all Persons that have, or claim any Land in Delaware River and Bay, without Delay to make a due Return to the Clerk of the Court in whose Jurisdiction it lies, and the said Courts to make a Return of the whole to the Governor, that those wanting Grants or Patents, may have them dispatched and sent; this to be published in the several Courts, which are to take care therein, and the Surveyor also to take Notice and see it be observed. 4. Appoint-

ing, Ephraim Herman Receiver of the Quit-Rents in Delaware River, in the Jurisdiction of Newcastle, and Upland Courts, and to keep exact Accounts, to be sent here by the 1st of May, made up to 25 March before. New York Records, No. 1. Fol. 97.

Aug. 13.

Three of the above Warrants and Orders, viz. for Herman to be Clerk of the Permits, for Herman to be Receiver of the Quit-Rents, and for Persons to come in for Patents for their Lands, are also entered in. Records from Newcastle, No. 11. Fol. 56.

Aug. 13-14.

Two more Warrants for Commissions from the Governor of New York, by the first he appoints a new Commander, viz. Captain Christopher Billop to be Commander in Delaware River and Bay, to take care that the Militia, in the several Places, be well armed, duely exercised and kept in good Discipline. By the 2d he appoints Walter Wharton to be Surveyor of Lands in Delaware Bay and River, and appoints what Fees he shall take. New York Records, No. 1. Fol. 98.

Aug. 14.

The Commission to Captain Billop to be Commander is also in Newcastle Records, No. 11. Fol. 55.

Aug. 14.

And the Commission to Wharton to be Surveyor is in Newcastle Records, No. 11. Fol. 60. and—Kent Records, No. 14. Fol. 6.

Aug. 14.

Another Order from the Governor dated in New York, upon a Complaint which had been made to him, not to hinder the Owners of a Mill, standing on a Creek, in Christiana Kill, in Delaware River, but that they shall have free Liberty, to cut Wood for Reparation of said Kill, upon any Land, not in Fence, according to Law. New York Records, No. 1. Fol. 98.

Same Day.

Governor Andros writes a Letter to the Justices of the Court at Newcastle, acquainting them of the Change of the Commander, and the other Officers which he the Governor had appointed, and will fill up their Court at the usual Time next Month, and then send them the Law-Book. As to penal Bonds, or such like Cases of Equity, you may judge thereof according to Equity: finds no need of a General or High Court in the River: directs them to take Care and fitting Orders for Ordinarys, that they be fit Persons, and duely licensed, and that none else be admitted to retail. New York Records, No. 1. Fol. 98.

Same Day.

That Letter, as entered also in Newcastle Records, No. 11. Fol. 57.

Sept. 4.

A Court held, before the Justices in the Court of Newcastle, when they read the several Commissions and Orders from the Governor of the 13th and 14th past, and entered then; and as to his Order, that Persons should come in for their Patents, they call it a Standing Order, and make an Entry that it was published in Court, and that a true Copy thereof, in English and Dutch, was fixed up at the Fort Gate in Newcastle. Newcastle Records, No. 11. Fol. 55, 56.

Sept. 5.

From the Newcastle Records, an Order made upon the Petition of John Edmunds to have a Patent for 800 Acres of Land, formerly granted him in 1673, but not settled in time, by Reason of the Dutch coming in, but he afterwards set down upon them again, with Captain Cantwell's Leave, and has ever since been in Possession, but some other Persons afterwards surreptitiously got a Grant of it, who are since dead, without Heirs, and therefore prays a Re-survey. The Court orders a Re-survey, and that the Petitioner do apply to the Governor to obtain a Patent, and to desire that the former Patent may be disannulled upon Record. Also the Court, according to the Governor's Order, appoint Ephraim Herman Vendu Master, and to receive the Fees by the Governor allowed. Also the Court appointed Walter Rowels Constable for one Year; his Limits or Bounds to be from the South side of St. George's Creek, to Boompties Hook, including Apoquemenen, Blackbird Creek, and all between the said St. George's and Boompties Hook aforesaid. Newcastle Records, No. 11. Fol. 58.

1677. *Sept. 6.*

John Moll (who appears at Fol. 55 to be the first named of the Justices) signs a Warrant to Walter Rowles, Constable of Apoquemenen, to take a List of all the Tytables within his Bounds, and to bring it to the next Court to be held in Newcastle. Newcastle Records, No. 11. Fol. 58.

Sept. 23.

Two more Commissions from Governor Andros dated in New-York; the first appointing seven Persons Justices of the Peace for the Jurisdiction of Newcastle and Dependencies, and three or more of them to be a Court of Judicature, for one Year, or till further Order; and the second authorising Captain Billop the Commander, to administer the Oaths to those Justices. New York Records, No. 1. Fol. 99.

The same Commissions entered in Newcastle Records, No. 11. Fol. 61.

Sept. 29.

From New York Records, A short Entry of a Grant from the Governor to John Stevens for 1200 Acres of Land, which had been certified by the Court at the Whorekill, in a Creek called Little Creek, near unto St. John's Creek, lying on the West side of Delaware Bay, and on the North side of the said Creek, near Duck Creek, and bounded partly upon Land formerly laid out to him. New York Records, No. 3. Fol. 65.

Same Day.

From Newcastle Records, another Grant, at full length, from Governor Andros, dated at New York, unto Justa Andries, of a House and Lot of Ground at Newcastle in Delaware, near the Old Fort, late belonging to Captain John Carr, as by Patent from the late Governor Lovelace of 1 May 1671, being condemned by the Court at Newcastle and sold for Carr's Debts, reserving Quit-Rent to the Duke one Bushel. Newcastle Records, No. 11. Fol. 59.

Oct. 2.

A Court held before the Justices at the Court of Newcastle, where the Governor's Commission to Mr. Wharton to be Surveyor, dated 14 Aug. last was read and ordered to be recorded. Newcastle Records, No. 11. Fol. 60.

Oct. 6.

That Court seems to be continued, and the Dedimus to swear the new Justices, and the new Justices Commission, are entered, and the new Justices were sworn. Newcastle Records, No. 11. Fol. 61.

Oct. 9.

A Bill of Sale from Captain Christopher Billop, to his Brother Joseph Billop, in Fee, of an Estate in England, wherein Captain Billop takes on himself this Title, viz. Commander in Delaware, belonging to the Colony of New York in America under his Royal Highness the Duke of York. With Governor Andros's Certificate of the 25th of the same October, that the Persons Names who were set down as Witnesses to that Deed, were Magistrates or Officers in Newcastle in Delaware, Mr. John Moll being a Justice of the Peace, and Mr. Edmund Cantwell Sheriff there; And, a Note that that Deed, and some other Writings, were entred at the Request of Mrs. Mary Billop, on 26 Octob. 1677. Also Christopher Billop's Bond (wherein he takes the same Title) of 9 Oct. 1677, to his Brother

Joseph Billop in 600*l*. penalty, to perform the Covenants in the said Deed of Gift. Newcastle Records, No. 1. Fol. 101.

Oct. 10.

A Letter from Governor Andros at New York, to the Governor of Maryland, acquainting him that having receiv'd the Duke's leave to go home this Winter, so as to return in the Spring, he shall sail this Month, and hopes, and doubts not of the Continuance of his good Neighbourhood. New York Records, No. 1. Fol. 99.

Oct. 13.

The Governor's three Letters, of the like Tenor, to the Judges or Magistrates of the Court at Newcastle on Delaware, to the Justices or Magistrates of the Court at Upland, and to those of the Whorekills, acquainting them of his going home; and he adds, any Appeals to be, to the Court of Assizes, which, or Extraordinaries, may be sent to the Secretary Captain Nicholls here, and, if occasion, to be communicated to the Council. New York Records, No. 1. Fol. 100.

This Letter is also in Newcastle Records, No. 11. Fol. 62.

The same Day.

The Governor writes another Letter to Captain Billop, the Commander at Delaware, acquainting him also of his going home, to return next Spring, and recommends Care to him in his Stations, both as to the Militia and Customs, and sends him by the Sloop, a Supply of Musket Bullets. New York Records, No. 1. Fol. 100.

Oct. 19.

Governor Andros's Letter to Ephraim Herman, Clerk of the Customs at Delaware, wishes he could have had an exact Account of the Quit Rents of the River and Bay, before his going to England; Draw out and deliver to the Commander, for the chief Collector, an Account of all Permits and Fees paid by two Ships, there named. New York Records, No. 1. Fol. 102.

Nov. 10.

Governor Andros's Commission, dated in, and under the Seal, of the Province of New York, wherein, by Virtue of the King's Letters Patent, and the Commission and Authority given to the Governor by the Duke, he the said Governor, in his Majesty's Name, appoints seven persons to be Justices of the Peace at the Whorekill, and the Dependencies, viz. Helmanus Wilbank, Henry Smith, Alexander Molesteyn, Edward Southeran, Paul Mash, John Barkstead, and John Roads, and any four, or more,

to be a Court of Judicature, To be in Force for one Year, or until further Order. New York Records, No. 1. Fol. 102.

Now we have no more Acts of Governor Edmund Andros Esq. : till he gets back to America next Year; and then he comes back Sir Edmund Andros, Knight. We see he received the Government from the Dutch, but the last Day of October, 1674. and we have Entries, (in the New York Records) of many more Grants of Lands made by the Governor Edmund Andros, Esq. : but without any Dates to them : they must of Necessity, therefore, have been dated between October, 1674, and Nov. 1677, and so here they follow, in this Place, it not being our Fault that the Records, in the King's Province of New York, are no better entered up.

NOTE—All these Lands that follow are expressly said to be on the West Side of Delaware River, or Bay, and are all contained in New York Records, No. 3. but the particular Folios of that Book are marked, against each single Grant.

To Peter Dalboe, 300 Acres on the East Side of Schuilkill, Quit Rent, three Bushels. Fol. 32.

To Laurentius Carolus, 350 Acres near Crum Kill, Quit Rent, three Bushels and an half. Fol. 25.

To Charles Jansen and others, 1,000 Acres in Naaman's Creek, Quit Rent, 10 Bushels. Fol. 58.

To Henry Barker, a Town Lot below the Fort at Newcastle. Fol. 54.

To William Curren and another, 600 Acres in St. George's Neck, North Side of Dragons Swamp, Quit Rent, six Bushels. Fol. 51.

To John Pitt, 500 Acres in St. George's Neck. Quit Rent, five Bushels, Fol. 52.

To Evan Salisbury, 300 Acres in St. George's Neck, Quit Rent, three Bushels. Fol. 49.

To George Axton, 200 Acres South Side of St. George's Creek, Quit Rent, two Bushels. Fol. 24.

To William Grant, 400 Acres on South Side of main branch of St. George's Creek, Quit Rent, four Bushels. Fol. 24.

To William Marriot, 100 Acres, on South Side of St. George's Creek, Quit Rent, one Bushel. Fol. 34.

To Richard Scaggs, 300 Acres, on South East Side of South West Branch of St. George's Creek, Quit Rent, three Bushels. Fol. 31.

To Abraham Enloes, 170 Acres on North Side of St. Augustine's Creek, Quit Rent, one Bushel and half. Fol. 59.

To Peter Alricks, 560 Acres, on South East Side of St. Augustine's Creek, Quit Rent, five Bushels and half. Fol. 59.

To Brian Omella, 200 Acres, on North Side of Drawyers Creek, Quit Rent, two Bushels. Fol. 48.

To Ditto, 200 Acres, on South Side of Drawyers Creek, Quit Rent, two Bushels. Fol. 57.

To Maurice Daniel, 190 Acres, on North West Side of Apocinimick Creek, Quit Rent, two Bushels. Fol. 60.

To Edward Swandall, 200 Acres, on North West Side of Blackbird Creek, Quit Rent, two Bushels. Fol. 50.

To Robert Tallent, 200 Acres, on South East of Blackbird Creek, Quit Rent, two Bushels. Fol. 51.

To Thomas Bromall, 300 Acres, on South East of Blackbird Creek, Quit Rent, three Bushels. Fol. 58.

To Thomas Coks, 300 Acres, on South East of Blackbird Creek, Quit Rent, three Bushels. Fol. 56.

To John Woodas, 400 Acres, on South East of Blackbird Creek, Quit Rent, four Bushels. Fol. 57.

To William Ford, 800 Acres, on North Side of Duck Creek, Quit Rent, eight Bushels. Fol. 22.

To John Denn, 200 Acres, on North Side of Duck Creek, Quit Rent, two Bushels. Fol. 27.

To John Morgan, 300 Acres, on North Side of Duck Creek, Quit Rent, three Bushels. Fol. 22.

To Francis Whitwell, 400 Acres, on North East Side of Duck Creek, Quit Rent, four Bushels. Fol. 48.

To Stephen Durdene, 400 Acres, on North East Side of a Branch of Duck Creek, called Middle Branch, Quit Rent, four Bushels. Fol. 56.

To Nicholas Bartlett, 400 Acres, on North East Side of Duck Creek, Quit Rent, four Bushels. Fol. 52.

To Henry Bowen, 400 Acres, on South Side of Duck Creek, Quit Rent, four Bushels. Fol. 56.

To Herbert Craft, 300 Acres, on South Side of Duck Creek, Quit Rent, three Bushels. Fol. 20.

To Edward Man, 500 Acres, on South Side of Duck Creek, Quit Rent, five Bushels. Fol. 34.

To Oliver Melington and another, 400 Acres, on South Side of Duck Creek, Quit Rent, four Bushels. Fol. 57.

To Henry Palmer, 400 Acres, on South Side of Duck Creek, Quit Rent, four Bushels. Fol. 48.

To Robert Dickes, 200 Acres, on North Side of a Branch above Little Creek, Quit Rent, two Bushels. Fol. 21.

To Peter Perry, 200 Acres, on North Side of a Branch of Little Creek, Quit Rent, two Bushels. Fol. 21.

To William Willoughby, 200 Acres above Little Creek, Quit Rent, two Bushels. Fol. 23.

To John Webb, 300 Acres, on South Side of Little Creek, Quit Rent, three Bushels. Fol. 23.

To John Autrey, 300 Acres, in St. John's Creek. Fol. 68.

To Daniel Whitley, 300 Acres, at the Head of St. John's Creek.
Fol. 68.

To Thomas Philips, 600 Acres, on North Side of St. Jones Creek, Quit Rent, six Bushels. Fol. 21.

To Peter Bawcom, 200 Acres, on South Side of St. Jones Creek, near Murder Creek, Quit Rent, two Bushels. Fol. 28.

To Robert Frances, 400 Acres, on South West Side of St. Jones Creek, Quit Rent, four Bushels. Fol. 21.

To Frances Neales, 400 Acres, on South West Side of St. Jones Creek, Quit Rent, four Bushels. Fol. 8.

To Henry Stevenson and another, 600 Acres, on North Side of Murder Creek, Quit Rent, six Bushels. Fol. 28.

To James Peddy, 600 Acres, in Maspillin Creek, and on North Side of it. Fol. 41.

To Thomas Davis Taylor, 500 Acres, East Side of Maspillin Creek. Fol. 42.

To John Field, 300 Acres, in Maspillin Creek. Fol. 44.

To Richard Hill, 1,000 Acres, on Mispillin Creek. Fol. 39.

To Josias Cowdery, 700 Acres, on North Side of Cedar Creek.
Fol. 65.

To Robert Hart, 600 Acres, on North-Side of Cedar Creek, Quit Rent, six Bushels. Fol. 33.

To Robert Hart Jun., 500 Acres, on Cedar Creek. Fol. 38.

To Thomas Davis, 300 Acres, in Cedar Creek. Fol. 39.

To Edward Forloun, 400 Acres, in Cedar Creek. Fol. 40.

To John Otten, 300 Acres, in Cedar Creek. Fol. 40.

To John Ashman and another, 300 Acres, on South Side of Cedar Creek, Quit Rent, three Bushels. Fol. 49.

To Dittos, 400 Acres, on South Side of Cedar Creek, Quit Rent, four Bushels. Fol. 50.

To Alexander Draper and another, 996 Acres, on South Side of Cedar Creek, Quit Rent, ten Bushels. Fol. 64.

To John Deprey, 1,000 Acres, near Slaughter Creek. Fol. 37.

To James Lillie, 300 Acres, on a Branch of Slaughter Creek.
Fol. 43.

To Randal Revel, 900 Acres, on Slaughter Creek, near to the Whorekill, Quit Rent, five Bushels. Fol. 20.

To William Prentis, 400 Acres, in the Woods, five Miles South West from the Whorekill Town. Fol. 42.

To William True, 300 Acres, in the Woods, five Miles Distance, South West from the Whorekill. Fol. 45.

Jacob Seth, 500 Acres, South West from the Whorekill Town, Distance about four Miles. Fol. 44.

To Henry Smith, 3,000 Acres, called Prime Hook, near Slaughters Creek, by Prime Creek, Quit Rent, 30 Bushels.
Fol. 20.

To John Cornelis, 360 Acres, in Marches Creek, to the North of the Whorekill Town. Fol. 36.

To John Kirk, 800 Acres, in the Woods, South West from the Whorekill Town, about five Miles, and to a Branch proceeding from Rehobuth Bay. Fol. 42.

To Daniel Brown, 400 Acres, upon Pagans Creek, near the Whorekill, Quit Rent, four Bushels. Fol. 46.

To Hermanns Woolbank, 134 Acres, upon the Whorekill and Pagans Creek, Quit Rent, one Bushel and a Quarter. Fol. 55.

To Edward Southeran, 400 Acres, on Pagans Creek, Quit Rent, four Bushels. Fol. 53.

To John Kephaven, 69 Acres, near Pagans Creek, upon the Whorekill, Quit Rent, Half a Bushel. Fol. 55.

To Alexander Molestedy, 611 Acres, upon the Whorekill, near Pagans Creek, Quit Rent, six Bushels. Fol. 46.

To William Tom, 132 Acres, by Pagans Creek and the Whorekill, Quit Rent, one Bushel and a Quarter. Fol. 54.

To Ditto, 80 Acres, upon the Whorekill, near Pagans Creek, Quit Rent, three Pecks. Fol. 55.

To Cornelius Verhoofe, 112 Acres, at Mouth of the Whorekill Creek. Fol. 37.

To Henry Stretcher, 600 Acres, upon the Whorekill, by Kick-out, Quit Rent, six Bushels. Fol. 32.

To John Lining, 300 Acres, in the Woods, to the Eastward of the Whorekill Town. Fol. 40.

To William Warren, 300 Acres, at Potoks Creek, on East Side of Whorekill Town. Fol. 38.

To Abraham Clement, 400 Acres, on Cimbals Neck, in Mill Creek. Fol. 35.

To Walter Lewis, 300 Acres in Cimbals Neck, on North Side of a Small Creek. Fol. 35.

To Henry Stretcher, 400 Acres, in Cimbals Neck, joining to Mill Creek. Fol. 41.

To John Allward, 400 Acres, on Cambals Neck, joining to Mill Creek. Fol. 41.

To James Welles, 400 Acres, at Loues Creek. Fol. 43.

To John Johnson, 400 Acres, on Rehobuth Bay upon Loues Creek. Fol. 45.

To Robert Brasey, 800 Acres, in the Woods, near Rehobuth Bay. Fol. 39.

To Robert Brasey jun., 300 Acres upon Rehoboth Bay, Distance from the Whorekill about ten Miles, bounded by Richard Brasey. Fol. 65.

To Richard Brasey, 300 Acres, on Middle Creek. Fol. 35.

To William Buston, 1,000 Acres, on South Side of Rehoboth Bay, and on North Side of the Great River, and by Middle Creek. Fol. 38.

To Henry Peddington 400 Acres, on Rehoboth Creek, Quit Rent, four Bushels. Fol. 53.

To Hubert Francis. Land, in St. Johnsons Creek. Fol. 44.

To John Collison, 300 Acres, on North Side of Great Creek, Quit Rent, three Bushels. Fol. 63.

To Thomas Gilley and another, 450 Acres, on North Side of Great Creek, Quit Rent, four Bushels and Half. Fol. 64.

To Charles Barnard, 300 Acres, on the Great Creek. Quit Rent, three Bushels. Fol. 63.

To John Briggs, 400 Acres on South Side of Bawcom Briggs Creek. Quit Rent, four Bushels. Fol. 24.

To William Froth, 200 Acres, on South West of Bawcom Briggs Creek, Quit Rent, two Bushels. Fol. 50.

To Samuel Barbary, 200 Acres, on South Side of Bawcom Briggs Creek, Quit Rent, two Bushels. Fol. 46.

To Cornelius Verhoofe, 1218 Acres, on North Side of Mispann Creek, by Indian Bridge Creek. Fol. 36.

To Samuel Stills, 400 Acres, on North Side of Maspim Creek. Fol. 36.

To Christopher Jackson, 300 Acres, on North Side of Mispann Creek. Fol. 45.

To Thomas Gadd, 300 Acres, on a Creek proceeding out of Mispann Creek, Quit Rent, three Bushels. Fol. 64.

To Samuel Styles and another, 744 Acres, on North Side of Mispann Creek. Fol. 37.

To Peter Cock, 650 Acres, on Quessinawominck Creek, Quit Rent, six Bushels and Half. Fol. 25.

To Laurence Cock and others, 1600 Acres, at Cohocksinks Creek, Quit Rent, 16 Bushels. Fol. 26.

To Michael Fredericks, 300 Acres, at Sissowokisink Creek, Quit Rent, three Bushels. Fol. 61.

To Errick Mullock and others, 950 Acres, at Sissowokisink Creek, Quit Rent, nine Bushels and Half. Fol. 27.

To Sanders Molestin, 50 Acres, on Back of his own Land. Fol. 43.

To Francis Walker and another, 450 Acres, on the lower Side of Nishambanack Creek, Quit Rent, four Bushels and a Half. Fol. 62.

To Peter Peterson and another, 500 Acres, on lower Side of Pimnecpahkaks Creek, Quit Rent, five Bushels. Fol. 26.

All the 108 foregoing Grants are shortly entered in the New York Records No. 3. at the Folios before respectively mentioned. 1677. Jan. 1.

From the Newcastle Records. A Court being held at Newcastle. Captain Billop, the new Commander there, delivers

them a Letter at the Fort belonging to that Town, being for the publick Service, ought to be repaired by the Inhabitants within that Jurisdiction, and not out of his Royal Highness's Revenues, and desires they'll take care to raise Moneys to repair it, and that this his Letter and their Answer to it may be recorded. Newcastle Records, No. 11. Fol. 62.

Jan. 2.

The Court read that Letter, and gave for Answer, that when the Sheriff brought in his Account of Receipts at Lady-Day, and the Debts already due on the publick Account should be first paid, the Court is willing what should be left should be so employed. Newcastle Records, No. 11. Fol. 62.

Jan. 3.

Five Petitions presented to the Court, who grant Liberty to four of the Petitioners to take up 200 Acres a-piece, and to the fifth to take up a Town Lot, they seating, improving, and building, according to the Governor's Orders. Newcastle Records, No. 11. Fol. 63.

March 7.

An Indenture between Samuel Styles, and Robert Trayley, of the Whorekills, Planters of the Province of New York, of the one Part; and John Shackerley, and Raynier Williams of New York, Merchants, of the other Part. Reciting, that the Duke of York, by his Grant under the Great Seal of the Province of New York, dated 29 Sept. 1677, did grant unto the said Styles and Trayley, a Parcel of Land on the West Side of Delaware Bay, called Styles's Delight, on the North Side of a Creek, called Muspalling Creek, containing 744 Acres; now they, for valuable Consideration, convey the same to Shackerley and Williams, in Fee, To hold, under his Royal Highness, for the Rents and Services in the original Deed recited—mentioned to be sealed and delivered in the Presence of the open Court, and acknowledged at the Court held for the Whorekills, on the 12th of the same; this Deed is said to have been recorded at the Request of Johannes Kypp; and that the original Deed was brought to St. Jones's Court, being a called Court, held for Johannes Kypp and Raynier Williams, Plaintiffs, and Cornelius Verhoofe, Defendant, on 23 April, 1681, confirming [I suppose they meant concerning] said Land. Kent County Records, No. 14. Fol. 15, 16.

1678. *May 22.*

From the Newcastle Records. A copy of Minutes of a Council held in New York, ordering an Express to be sent to the Commander and Justices of Newcastle in Delaware to notify to

Major Fenwick, not to assume the Powers he did, on the East Side of the River, he having therein broke his Parole, and if he refuses, the said Commander and Justices are to order him to go to New York, and if he denies that, then the said Commander and Magistrates, together with the Sheriff, are to use Force to seize his Person, and send him to New York. Newcastle Records, No. 11. Fol. 64.

June 3.

An Entry in the Newcastle Records, that in pursuance of the said Order of Council, the Justices from Newcastle writ the there following Letter to Major Fenwick, at New Salem, acquainting him what order they had received from the Council of New York, and that he should forbear assuming any power on the East Side of Delaware, and to send them his Answer. Newcastle Records, No. 11. Fol. 64.

Same Day.

An Entry in the Newcastle Records, of Major Fenwick's Letter sent back by Thomas Woolston, Under Sheriff, wherein he insists he has Authority to act, by Virtue of the King's Letters Patent, and of the Duke's Grant to John Lord Berkley, and Sir George Carteret, and the Lord Berkley's Deed to the said Major Fenwick, all which had been before produced to the Governor and Council, at New York; and that he is not obliged to go to New York, &c. Newcastle Records, No. 11. Fol. 64.

June 5.

Another Entry in the Newcastle Records, of a Letter signed by the Justices there, and directed to Captain Matthias Nicholls, and the rest of the Council in New York, acquainting them with, and sending them the Letters between them and Fenwick informing, that Fenwick still acts: and granted, but on the Saturday last, a special Warrant for the apprehending one Eldridge and declares, that no Man shall take him alive; no, not if the Governor himself came; therefore, what you further resolve, if directed to us, we desire may be absolute and sufficient, for he won't be taken without Bloodshed. As to Mr. Toms, deceased, there was an Execution against his Body, but not against the Estate: But, if your Honours think fit that the whole Estate, real and personal, be sold, we then desire a more positive and absolute Order, and it shall be readily performed by us. Newcastle Records, No. 11. Fol. 65.

June 21.

Another Entry of a Meeting (afterwards) of the Commander and Justices at Newcastle, at which Meeting they read and entered, an Answer, of this Date to the Justices from the Council

of New York, complaining that their letter of the 5th was very little satisfactory to the Council; they say the Council's former Order about Fenwick was absolute and full, in case of his Refusal, so they shall not alter any thing therein, but leave the Justices to answer their Neglect to the Governor, who is daily expected. Also a great deal about selling Captain Tom's Estate, to pay Debts; and that it's unreasonable Captain Delavall's Judgment should be excluded, because Mr. Tom had in his Will excluded it; The execution against the Debtor's Body not being thought sufficient to debar the creditor where there was Effects. The Council admires at the court's so sudden giving Judgment against the Deceased's Estate for a Stranger, of Maryland, which may defeat others within the Government: Upon your Desire of more particular Orders, the Council think it convenient that one of the Creditors should administer upon Tom's Estate, and that Captain Cantwell (who resigned any Interest for his Son, who was named Tom's Executor) is the fittest Person to have it: who, upon giving Security to administer according to Law, and returning a Certificate hereof, may have Letters of Administration from hence. Newcastle Records, No. 11. Fol. 66.

July 17.

An Entry in Newcastle Records, that the Commander and Justices this Day met at Newcastle, and read the forementioned Letter, and then Captain Billop acquainted them that he had been last Week at Salem, and that then Fenwick was willing to answer the Councils Order at New-York, and that he will surrender himself at New-York; whereupon, it was resolved that, if Fenwick will give under his Hand, by a Letter to the Council, that he will not assume any Government on that side of the River, and that he will, within 20 Days, appear at New-York, then, he be left there: but, in case of Refusal, then, that the Commander and High Sheriff press and take with them so many of the Militia as they think fit, and with them seize Fenwick, and send him to New-York, without Delay, according to the Order of the Council. Newcastle Records, No. 11. Fol. 67.

Same Day.

A Letter from the Commander and Justices at Newcastle, to Major Fenwick at Salem, of the Purport of the foregoing Order. Newcastle Records, No. 11. Fol. 67.

July 24.

Another Entry in Newcastle Records of a Letter from the Court at Newcastle, directed to Captain Matthias Nicolles, and the

rest of the Council, at New-York, acquainting them what they had done as above, against Fenwick, and that, since, the Commander and Sheriff have fetched Fenwick to Newcastle, and the Commander intends to send him by Land. As to Tom's Estate, Captain Cantwell offers Security, and intends to go to New-York himself to take out Letters of Administration. As to the Judgment so suddenly given, those of Maryland make no difference, in the like cases, with us, but suppose there will be little left after Captain Delavall's Debt is paid. Newcastle Records, No. 11. Fol. 67.

Aug. 4.

From the Records in Kent County, A Grant at full Length from Sir Edmund Andros Knight, Lieutenant-Governor under the Duke of York, dated in, and sealed with the Seal of New-York, granting to John Briggs Land laid out by Warrant from the Court of Whorekills on West side of Delaware Bay, about two Miles above St. Jones Creek, bounded partly by Robert Jones, and Walter Wharton, containing 260 Acres as by the Survey. Quit-Rent reserved to the Duke 2 Bushels and $\frac{1}{2}$. Kent County Records, No. 14. Fol. 7.

Aug. 14.

From New-York Records, the Entries of Three Grants from Sir Edmund Andros of Lands laid out by Warrant from the Court at the Whorekill. 1. To Francis Whitwell on West side of Delaware Bay, and on North side of the Souther most Branch of Duck-Creek, containing 1000 Acres. Quit Rent 10 Bushels. 2. The just-mentioned Grant to John Briggs, of Land on the West side of Delaware Bay, about two Miles above St. John's Creek, bounded partly by Robert Jones and Walter Wharton, containing 260 Acres, Quit Rent two Bushels and a Half. 3. To John Briggs and Mary Phillips jointly, on North side of St. Jones's Creek, containing 450 acres of Land and 40 Acres of Marsh, Quit Rent 5 Bushels. New-York Records, No. 3. Fol. 66.

Aug. 22.

From the New-York Records, Minutes of the Council, Major Fenwick having been sent from West-Jersey, in the Governor's Absence about his late Disturbance there, and having had Copys of what was laid to his Charge, in the several Depositions taken at Newcastle in Delaware against him, and now appearing before the Governor in Council, desiring Time to answer and to prepare Witnesses on his Part, alledging his Interest to be distinct from this Government, so not to be judged or concluded by it, therefore, prays an Appeal from the Judgment

of the Court of Assizes to the King, in order whereto presses to have leave to go home about his Occasions, the same was not allowed, nor here dismiss, but referr'd to the Judgment of the Court of Assizes given against him. New-York Records, No. 1. Fol. 95.

Sept. 6.

From Newcastle Records, at a court which was afterwards held at Newcastle before all the Justices there is an Entry made, of a Receipt, of this Date, signed by John Moll and Peter Alricks, for 8 Iron Guns, 24 Musquets, Bandileers, Iron and Shott, Musquet Bullets, Powder, &c. received from Capt. Billop as belonging to the Fort (I suppose he had been then removed.) Newcastle Records, No. 11. Fol. 68.

Oct. 8.

From New-York Records, Governor Andros's Commission, dated in, and sealed with the Seal of New-York, appointing 7 Persons, Justices of the Peace at the Whorekill and Dependencies in Delaware Bay, viz. John Avery, Francis Whitwell, Alexander Molesteyn, John Kipshaven, Luke Watson, John Roads, and James Wells, and any four of them to be a Court of Judicature, to be in Force for one Year. New-York Records, No. 1. Fol. 103.

Oct. 11.

A Letter from Capt. Matthias Nicolls, dated from New-York, and said to be written by the Governor's Order. There was 680 Acres laid out for Nathaniel Walker on 11 May 1677, situate upon the South-westernmost Creek of Rehoboth Bay, it is the Governor's Order that he shall have the Land, after it has been certified by your Court that it's not already granted or possess; upon the Return whereof he may have a Patent for the same. There is a Piece of Land at the Whorekill possess between Nathaniel Walker and John Winder, for which there is a Patent in the Name of Robert instead of John Winder, the which is to be rectified, the Land lyes by a Broad Creek, between the Kill and Prime Hook, containing in the Patent 1,000 Acres, and an Island lying, at the Bottom of the Land, of about 100 Acres, which was surveyed for Part of it: but Henry Stretcher having a Grant from the Court, for about 600 Acres, in no certain Place, has pitched upon this 100 Acres Island as Part, the same not being particularized in Winder's Patent; which, if enjoyed by Stretcher, will hurt Walker and Winder; it is the Governor's Pleasure that the said Island shall belong to Winder's Patent, and Stretcher is to take up his Land in some other Place, altogether, as near as may be, and not by Parcel or Piece-meal. Sussex Records, No. 17. Fol. 8.

1678. *Oct.* 12.

From the New-York Records, Governor Andros signs a Writing at New-York, certifying that Capt. Avery, who was one of the seven Justices of the Peace of the Court at Whorekill, had taken his Oath as such, and authorising him to administer the Oath to the others joyned with him. New-York Records, No. 1. Fol. 103.

Oct. 14.

A very short Entry in the New-York Records, that there was a Commission for seven Persons there named as Justices of Newcastle in Delaware. New-York Records, No. 1. Fol. 103.

Oct. 26.

From the New-York Records, the following Order, signed by Governor Andros at New-York, viz. Whereas in 1675 I did, amongst other Regulations, remit the Quit Rents for the first three Years, of all New Lands to be taken up in Delaware Precincts, which has proved inconvenient, by many taking up and not seating; I therefore repeal and recall the same, except for such as have seated and improved; but all such as have taken up Land, and not seated and returned and made due Returns thereof, as by Law and Orders, sent last Year to be recorded, to forfeit the same, and the Land to be disposed of as vacant Land; and all such as have improved and seated, but not made Returns, are required, within six Months, to return it to the Clerk of the Court within whose Jurisdiction it is, to be there recorded, and by the Court certified to the Secretary's Office here; and such as have not paid their Quit-Rents due, may come, within six Months as above, and account and pay the Arrears, to the now Receiver, from my first coming into the Country in 1674; and, for the future, all such as have or shall take up Land, are to pay their Quit-Rents from the taking up such Land, and yearly, at the Towns of Upland, Newcastle, and Whorekill, for the several Precincts, to their Perils; and such as shall take up and not improve Land, to forfeit the same according to Law. This Order to be forthwith publisht and set up at the Court-houses of Upland, Newcastle and Whorekill, in Delaware. New-York Records, No. 1. Fol. 104.

The same Order also entered in the Newcastle Records, No. 11. Fol. 70. and in Sussex Records, No. 17. Fol. 9.

Oct. 26.

From the New-York Records, Governor Andros's Letter dated in New-York, and sent to the Justices of Newcastle. Your Desire of a Minister is allowed by the Law; a new Commission for Magistrates is herewith sent; and also a Law-Book; Capt. Carr's Land is allowed to be sold for the Creditors, and the

Purchaser may have a new Patent for his Title; the Court have power to order Matters relating to the Surveyor, in every respect, according to Regulation and Law; the Book of Laws gives Directions for Weights and Measures, but ancient Custom may be lookt upon as Law; the publick Weigh-house is to be gross Weights only; Payment for Wolves and other necessary Charges are to continue, on the East side, as formerly; when the Accounts of publick Debts are stated, and allowed, Order shall be taken for Payment as desired; Houses and improved Lands are liable to pay Debts, as well as Moveables; where none administer the Court may appoint fit Persons, having due Regard to Widows; all Favour may be expected to Trade (so as the Acts of Parliament and Orders thereon be not infringed) with due Regard to the Custom-house here; the late Commander [Billop] is here, and to give an Account of his acting in your Parts; if any have been wronged by him, they shall have Right; also any publick Matter, which may further accrue, rectified, as soon as may be. New York Records, No. 11. Fol. 103.

The same Letter entered in Newcastle Records, No. 11. Fol. 68.

Same Day.

There is a very material Entry. in the New-York Records, of a Commission granted by Governor Andros at New-York, appointing six Persons to be Overseers, select Men, or Commissioners, on the West-side of New-Jersey, on Delaware River, at Elsingburgh and Parts adjacent, for one Year, amongst the New-comers: and, if any Dispute arise amongst them and old Inhabitants of those Parts, then, Mr. Outhout, who has been an ancient Inhabitant there, and is now one of the Justices of Newcastle, to have notice, who is authorized, upon such Occasion, to be one of the Court, and, being there, is to preside; and you, or any four, to keep a Court as a Town or Corporation, quarterly or oftener, to appoint Constables, and to allow fit Proportions of Land for present Improvement, the same being duly purchased, and to hear and determine all Matters, not extending to Life, Limb, or Member, or exceeding 5*l*. Above which, to admit an Appeal to the Court of Justices at Newcastle. New-York Records, No. 1. Fol. 104.

Oct. 28.

From the New York Records, Governor Andros's Order, dated in New-York; directed to the Justices of the Court of Newcastle, reciting that he had received several Complaints and Petitions, from divers Inhabitants of the East side of Delaware River, that they have been disturbed in the Possession of their Lands and Tenements by Major John Fenwick and others, I desire and

authorize you the Justices of the Court of Newcastle to take care that the said Inhabitants be not disturbed in their Possession, upon any Pretence whatsoever, by the said Fenwick or any others, and, if Occasion, to make me forthwith acquainted with the same. New-York Records, No. 1. Fol. 105.

This same Order is also entered in Newcastle Records, No. 11. Fol. 69.

Nov. 1.

From the Newcastle Records, Entry of the Court's Proceedings held this Day at Newcastle, wherein the Governor's Letter to them, before stated, of the 26th of October, is entered: then they go on and say, that Mr. Michael Baron, for himself and in behalf of the other old Inhabitants of the Eastern Shore, this Day brought and produced in Court a Warrant from Sir Edmund Andros Governor, directed to this Court, being the last Order herein before stated, which Warrant they also record; Then they go on and say, that the Governor's Order about Lands, herein before stated, was also this Day read in Court and fixed up at the Court-house, and, then, that Order is also entered; and then they proceeded to make several Orders of their own; the Petition of Hans Peterson, desiring to take up Lands in Schilpatts Creek, formerly improved, is referred to next Court day; another Petition of Do. to take up some Marsh before Joulsen's Island referred till next Court-day; a Petition of Peter Alricks to take up 200 Acres in Apoquenemen, granted, he seating and improving according to the Governor's Regulations; a Petition of John Walker, to take up 200 Acres granted on the same Conditions; a Petition of Moses de Gann for a Lott in the Town of Newcastle granted; and the like to John Boyer. Newcastle Records, No. 11. Fol. 70.

Nov. 18.

From the New-York Records, Governor Andros's Warrant, dated in New-York, and directed to Capt. Edmund Cantwell, Sheriff of Delaware, authorizing him to put Robert Stacey in Possession of Mattiniconk Island, in Delaware River, which the Governor had leased to Stacey for seven Years from the 1st of January then next, to enjoy the Benefit of his Lease. New-York Records, No. 1. Fol. 105.

Same Day.

Governor Andros's Order, signed and dated at New York, reciting that some of the Land on the West side of Delaware River, below the late Purchase at the Falls, is as yet, unpurchased of the Indian Proprietors, therefore, he authorizes and appoints Capt. Edmund Cantwell and Ephraim Harman, to agree

for and buy of the Indian Proprietors, all that Tract, yet unpurchased, on the Western Shore of Delaware River, between the late Purchase at the Falls and the former below, together with any Islands in the River, and to adjust Time, Place, Sum, and Species, for Payment, of which to give me present Notice, for my Approbation, whereupon Order shall be taken for the Indians Satisfaction. New-York Records, No. 1. Fol. 105.

Same Day.

Governor Andros's further Order, dated at New York, requiring Capt. Cantwell and Ephraim Herman to send the Governor a particular Account of the Rate or Levy laid in Delaware the last Year towards defraying publick Charges in those parts what it was, how raised, what it amounted to, and how disposed of? And also the Copies of all Orders relating thereto, and a particular Account of what Debts there are, yet remaining unpaid, since the late Change of Government, that due Care may be taken for their Satisfaction. New-York Records, No. 1. Fol. 105.

Nov. 30.

An Order of the Governor and Council in New York, reciting that Henry Smith, of the Whorekill in Delaware Bay, had raised several Reports against some of the Magistrates and Officers belonging to the Court there, and having declared the same before the Governor, did afterwards, on the 8th of October past, deliver in a Paper, charging two of the said Justices and the Clerk of the said Court with several Crimes in general Terms, whereupon, he was committed to the Sheriff of the City of New-York, till he should give 500*l.* Security to prosecute or make good his Charge against them according to Law, which he refusing, but pretending an Inquest in the County for it, the whole Matter having been debated in Council, the said Smith is adjudged to pay, as a Fine, to the Church or Poor here, 10*l.* together with all incidental Charges; and that he be, likewise, bound in a Bond of 20*l.* at the Whorekills, to be of the good Behaviour, till the next general Court of Assizes: and all Persons left to due Course of Law. New York Records, No. 1. Fol. 106.

NOTE WELL.—That we have, from the Records of New-York, the Commissions and special Warrants hereafter mentioned, which were granted by Governor Andros, in the selfsame Form and Manner, for Magistrates, Officers, and upon other Occasions, to the City of New-York, and other Places, which were merely within the Body of the Province of New-York, viz.

1674. Nov. 10. His Commission to the Mayor and Aldermen of the City of New-York. New-York Records, No. 1. Fol. 128.

1674. Feb. 25. His Commission to the Clerk of the Court in Long-Island. Fol. 129.

1675. Sept. 6. His Commission to Justices of the Peace for Kingston. Fol. 129.

1675. Feb. 9. His special Commission to try a Murther in Long-Island. Fol. 129.

1676. May 13. His special Summons for the Constable of Hempsted to appear at New-York. Fol. 130.

1676. July 1. His Commission to a Sheriff in Long Island. Fol. 130.

1676. Oct. 14. His Commission appointing Mayor, Aldermen and Sheriff of the City of New-York. Fol. 131.

1676. Dec. 1. His Warrant to take up stray Cattle in Long-Island. Fol. 132.

1678. Sept. 6. His Commission to the Magistrates at Schanectady. Fol. 132.

All which shew that he exercised exactly the same Authority in the Duke's Name, in no other manner, in the Body of the Province of New-York, than what he did, in so many Hundreds of Instances, in that Dependency, Delaware.

Mar. 5.

At a Court in Newcastle, held before the Justices and Sheriff, upon William Pierce's Petition to have a Re-survey, and Grant in his own Name, of two Tracts of Land containing 500 Acres on the West side of Delaware River and on North side of Duck Creek, heretofore granted by Patent from Governor Andros to Persons who have since deserted, his Petition is granted, he paying the former Quit-Rents and all other charges; and upon John Cox's Petition of the Like Kind, for 200 Acres on the South side of St. George's Creek, the like Order made by the Court. Newcastle Records, No. 11. Fol. 72.

1679. *Mar. 29.*

From the New York Records, Governor Andros's Order upon a Petition of Cornelius Jansen of the Whorekill, That Kilmanus Wooltbank put the Petitioner upon a Piece of Land in those Parts, for three Years, pretending that it was his; and at the End of the Term warned the Petitioner off, altho', as the Petitioner is informed, he has no Right thereto or Patent for the same; and therefore the Petitioner prays, since it is at his Royal Highness's Disposal, and having wrought so long upon it, that he shall enjoy it; the Magistrates at the Whorekill are to examine and make Report of the Matter, and if it be as alleged, the Petitioner to continue in Possession till further Order. New-York Records, No. 1. Fol. 107.

Apr. 23.

From the Newcastle Records, an Entry made of a Letter sent by the Justices of the Court to the Governor at New-York, acquainting him that one Wallis left a Chest of Goods well lockt, and put into the House of Hutchinson, and, coming to fetch it away, found it had been broke open and lockt up again, and many Goods taken out of it; after three strict Examinations Hutchinson has confest, before us, that he stole the said Things, and Search being made, there is found in Hutchinson's House most of the Things; Hutchinson has been five Days kept Prisoner in our Fort: we desire the Governor's Orders and Directions, after what manner we are further to proceed, which shall be strictly observed by us. Newcastle Records, No. 11. Fol. 73.

May 4.

From Newcastle Records, an Indian Deed of Sale, whereby Mechaeksitt, chief Sachem of Cohansink and sole Indian Owner and Proprietor of all that Tract of Land called by the Christians Bompies Hoeck, and by the Indians Newsink, in consideration of a Gun and some other Matters, grants to Peter Bayard of New-York, all that Tract of Land called Bompies Hoeck, lying on the West side of Delaware River, and at the Mouth thereof, beginning at a great Pond and a little Creek issuing out of the said Pond, being the uppermost Bounds of the said Land, and stretching down along the said River to Duck Creek, including all the Land, Woods, Marshes, &c., between the said uppermost Pond and Creek, and Duck Creek, to hold to Peter Bayard in Fee, to his own sole Use. Note. This Deed is witnessed by Ephraim Herman, Clerk, who was one of the two Persons that the Governor had ordered to purchase the Lands of the Natives, so that (by that Circumstance) it should seem to have been purchased by Governor Andros's Order. Newcastle Records, No. 11. Fol. 75.

May 19.

From the New-York Records, the Entry of a Letter to the Magistrates of Newcastle, which is signed in New-York by Matthias Nicolls, and is there said to have been by the Governor's Order; says the Governor has received theirs of 23 April, about Hutchinson's Theft, By the Governor's Command I am to acquaint you this Fact could not reach Hutchinson's Life, by the Strictness of Law, if it were in England, and the Duke's Laws are much more favourable, as you'll see if you turn to the Capital Laws; he reasons about the Nature of this Crime, and its Punishment, but the Governor leaves the whole to your Court to judge and determine, and to put your Sentence in Exe-

cution. In the Case between Harwood and Vanderveere, concerning the Stone put in the Bag of Feathers, it's the Governor's Pleasure that there be no further Proceedings in your Court, his Honour has remitted the Fine, and a Stop is to be put to the levying the Charges, the whole Case being order'd to be heard, in this Place, before the Governor and Council in October next, when both Plaintiff and Defendant are to give their Attendance here. As to the Difference, before your Court, about the Pretence of Land between Vanderveere and Teneman, the same is, also, to be remitted here, with all Papers or Proceedings relating thereto, for a final Determination. Laurentius Carolis complains that an Execution against him has, for the greatest part, been levied by the Sheriff, and the Remainder called for, tho' he has Judgment for a greater Sum against the same Person Hans Paterson; it's an old Difference about a Mare: The same is, also, to be respited, and his Excellency desires an Account how that Matter stands between them, whereupon a definitive Order will be given to determine the Matter in Difference between them. Thus far I have in Charge from his Excellency the Governor to transfer to you. New-York Records, No. 1. Fol. 107.

A Copy of the foregoing Letter is also in Newcastle Records, No. 11. Fol. 73.

May 24.

From the Newcastle Records, a Return, this Day made, by Edmund Cantwell, of his having, by virtue of a Warrant from the Court of Newcastle, which was dated the 8th of November last, laid out for Englebert Lott, two Lots of Ground at the North-east End of Newcastle Town, where the old Fort stood. Newcastle Records, No. 11. Fol. 71.

May 31.

An Order signed by Governor Andros, for Peter Gronendike at the Whorekill; according to the Order and Judgment of the Court of Assizes, Cost of Suit, or Court-charges only, to be paid; which being satisfied here, the Party is not to be molested by Henry Smith or any other, an account of any other Charges of said Suit. New York Records, No. 1. Fol. 108.

1679, *June 4.*

At a Court held in the Town of Newcastle before the Justices, they granted Liberty to seven Petitioners, Fabian Orme, Christopher Ellitt, John Daston, Elias Brown, Thomas Snelling, and Thomas Broseum, to take up 200 Acres each, and to Benjamin Gumley 300 Acres, in all 1500 Acres of Land, within that Court's Jurisdiction, not before granted, taken up or improved by any other; they seating and improving according to the

Governor's Orders and Regulations. Newcastle Records, No. 11. Fol. 70.

June 6.

A Letter from New-York, signed by Matthias Nicolls, [who was Secretary] and writ, by the Governor's Order to the Magistrates of the Whorekill, giving them an Account of the Answers given, upon several Requests which had been made to him by particular Persons of their Parts, and his Approbation of several Matters recommended to him by their Court, which had been (also) inserted or indorsed upon the Requests, or upon the Orders of their Court sent back to the Parties concerned. In the Matter between Woolbank and Johnson, concerning which the Court had certified their Report, the same was to be allowed by Order of the Governor, and to be confirmed to Woolbank. On Verhoof's Petition to your Court to be allowed Clerk, and about Fees, which is certified to be granted by said Court, upon their Recommendation the Governor allows it, and Fees of extraordinary Courts to be ascertained. All Fees to be collected, as by Execution. Upon the Court's Choice and Recommendation of Verhoof to be Surveyor at the Whorekill, the Governor orders him to be confirmed. Upon Kipshaven's Petition to the Governor for a Piece of waste Land, the Governor has granted the same (if as alledged) and to be surveyed in order to a Patent. Upon Vine's Petition to the Governor to officiate as Sheriff at the Whorekill and Precincts, the Governor returned the following Answer. Upon Security and Court's Choice, allowed and confirmed. Upon Clark's Petition to the Governor, of the Uncertainty of Surveyors Fees, he orders the Price of Surveys be, at the Whorekill, &c. as in Virginia or Maryland. A Magistrate of the City of New York unadvisedly took an Oath of one Taylor, concerning Fees which he claimed for surveying at the Whorekill, the Magistrates of this City having nothing to do in any other Parts of the Government out of their Precincts, and the said Oath being taken contrary to Law, you are to take no Cognizance thereof, and by no means to admit it as a Proof or Evidence for Taylor. New York Records, No. 1. Fol. 109.

June 10.

From the New-York Records, the Governor's Letter, signed by him, and dated in New-York, directed for the Magistrates or Court of Newcastle, owning the Receipt of theirs of the 4th Instant, which had exclaimed against him, as having improperly remitted Vanderveere's Fine, in the Case between Harwood and him, which had been determined by their Court. And he orders, that their Clerk, or some other in their behalf,

and Harwood and Vanderveer, repair and attend at New-York for a Hearing of the Cases they mention, to satisfy themselves and others, and that, tho' it has not been lately, it is no wrong, if Re-hearings be from them, as well as other subordinata Courts, tho' for the meanest Subject. New-York Records, No. 1. Fol. 110.

July 2.

From Newcastle Records. The Court there make and sign a Writing, empowering Mr. John Moll, Capt. Edmund Cantwell and the Clerk Ephraim Herman, to appear in behalf of the Court, before the Governor at New-York, as well in Defence of the Court, and the Orders and Sentences by them past, as also in all Humility to request Privileges, and to represent Grievances and desire that they may be removed, &c. Newcastle Records, No. 11. Fol. 77.

July 8.

Governor Andros's Commission, dated in New-York, appointing Philip Pocock Surveyor to survey and lay out Tracts of Land below the Falls of Delaware River, on the West side, for several Persons lately come out of England and destitute of Land, to take such Fees as in Maryland, and to make due Returns of such Surveys for the Confirmation. New-York Records, No. 1. Fol. 110.

Aug. 20.

From New-York Records, the Entries of three Grants from Sir Edmund Andros, viz. 1. For Land laid out for Josiah Barkstead, by the Approbation of the Court at the Whorekills on the West-side of Delaware Bay, and on the South-east side of St. Jones Creek, containing 800 Acres as by Survey, Quit-Rent 8 Bushels. 2. For Lands in Delaware Bay, in the Woods, near unto Rehobah Bay, distant from the Whorekills about ten Miles, unto Francis Meggs and John Colley, containing 600 Acres, as by Survey, Quit Rent 6 Bushels. 3. For Land in Delaware Bay, and being upon Rehobah Bay, distant about eight Miles South from the Whorekills, which had been laid out by Approbation of the Court at the Whorekills for John Okey, and bounded, partly by Timothy Love, containing 400 Acres, Quit Rent 4 Bushels. New York Records, No. 3. Fol. 67.

Same Day.

Another Grant from him, to Andrew Deprie, for Land in Delaware Bay, near unto Rehobath Bay, on the Northside thereof, bounded, partly, by John Avery, containing 400 Acres, Quit-Rent 4 Bushels. New-York Records, No. 3. Fol. 68.

Same Day.

Also two more Grants from him, 1. To Robert Hignat and

John Crue, of Land already seated in Delaware Bay, near unto Rehobah Bay, about four Miles to the South of it, called Westchester, containing 900 Acres, Quit-Rent 9 Bushels. 2. To Robert Bedwell, of Land on the West-side of Delaware Bay, and on South-East-side of St. Jones Creek, bounded by the Cypress Branch, and Chaptank Road, &c. containing 800 Acres, Quit Rent, 8 Bushels. New-York Records, No. 3. Fol. 69.

Nov. 20.

Four more Grants from Governor Andros, dated in New York. 1. To Peter Teschermaker, for a Town Lot in the West End of Newcastle Town, Quit Rent, one Bushel. 2. To Matthias and Amilius de Ring, for another Town Lot at the West End of Newcastle Town. 3. To Hendrick Vanderburgh, for another Town Lot in Land Street in Newcastle Town, Quit Rent, one Bushel. 4. To Thomas Jacobson, and two others, of Land on the West Side of Delaware River, called Red Clay Point, on the North, and North West Side of Bread and Cheese Island, and more than half compassed with a Branch of Christiana Creek, called Red Clay Creek, containing 248 Acres, Quit Rent, two Bushels and an Half. New York Records, No. 3. Fol. 70.

Same Day.

Three more Grants from Governor Andros. 1. To Bryan Omella, for some improved Land, on West Side of Delaware River, on North Side of Apoquimine Creek, in the Drawers Creek, containing 400 Acres, Quit Rent, four Bushels. 2. To Maurice Daniel, of Land on West Side of Delaware Bay, on North West Side of Apoquimini Creek, containing 190 Acres, Quit Rent, two Bushels. 3. To John Moll, of three Town Lots in Newcastle Town, late Captain John Carr's, and since sold at publick Outcry, in Warmore Street, Harte Street, Land Street and Minquaes Street, Quit Rent, two Bushels. New York Records, No. 3. Fol. 71.

Dec. 3.

An Entry in the Newcastle Records, that Hendrick Williams petitioned the Court, shewing, that, according to this Court's Answer to his former Petition the third of April last, concerning his two Judgments, and Executions against the Estate of Walter Wharton, deceased, he had petitioned the Governor at New York, who gave for Answer, he thought it but Reason the Petitioner should be paid his Debt out of the Estate of Wharton: wherefore the Petitioner prays an Order, with Preference, against Wharton's Estate, ordered, since the Governor is of Opinion he ought to be paid, that he be paid, accordingly, out of Wharton's Estate; but no Preference to be allowed,

unless——the Governor shall think fit so to order it. Newcastle Records, No. 11. Fol. 78.

Feb. 4.

An Entry of a Letter, from the Justices at Newcastle to the Governor——with the Request of several Planters, Inhabitants of that County, who owed Quit Rents in Wheat, and were threatened by the Receiver, but had no Wheat to pay, only Tobacco; praying, that that might be taken at a reasonable Price, to be set by the Governor, it being taken in the neighbouring Colonies at 2d. a Pound, otherwise, several must forfeit their Lands. They, likewise, desire to have a Rule, whether Arrears of Quit Rents, due for forfeited Lands, must be paid by the new Possessor, when new granted. Desire Directions about an old Man who had been employed to look after the Fort. Also, whether the Fort should be repaired, and how the Means for it should be found. A new Commission being coming from the Governor, and one of their Magistrates being going to England, they present the Names of two Persons, as fittest to be put in the Commission in his stead, if the Governor thinks fit. They desire the County may be enlarged up and downwards, as far as St. Jones's. Newcastle Records, No. 11. Fol. 79.

Mar. 2.

An Entry, that one Randal presented a Petition to the Court, suggesting, that he bought 300 Acres of one Test in St. George's Creek, for which he paid the Quit Rent last Year, and is willing to pay it this, but is informed the Court had escheated it for want of Settlement; and, as he had been a Prisoner in Turkey, desired to have the Land again; upon examining the Case, the Court find the Land was thrice sold, but never any Improvement made, which is contrary to Law, and therefore escheated; and, since the Court cannot lawfully recall their former Grant and Order therein, to Rolf Andrews and another, they, therefore, refer the Petitioner to the Governor at New York, for his Order and Determination therein. Newcastle Records, No. 11. Fol. 81.

1680, *May 24.*

From New York Records, the Duke of York's Commission, dated at Windsor, authorising and appointing John Lewin, Gent. to be his Agent and Servant, in New York and Albany, and other the Duke's Lands and Territories in America; to proceed thither, and to enquire and find out all the Estate, Rent, Revenues, Profits, and Perquisites, which in any Sort did of Right belong, and appertain to the Duke, and arise in any

of those Places, and to examine all Books, Papers, Records, and other Matters relating thereto; with Power to demand, from all the Duke's Officers and Servants, or any others employed in any Place of Trust belonging to the Duke, all Books, Papers, Writings, Records, Registers, Accounts, and all other Things tending to the Discovery thereof; and, in a more especial manner, to enquire and find out, whether the free Trade of any the Inhabitants of those Places, or any Merchants trading thither, now is, or has been, obstructed or hindered, and by what means, and how such Obstructions may be removed, and by what Methods the Trade and Traders in those Places may be encouraged and increased; if being the Duke's real Intentions and Desire to encourage and advance the Ease, Benefit, and Advantage of Trade, and the Merchants and Inhabitants there; and for the better executing of this Trust, which the Duke reposes in him, he is to observe and follow such directions and Instructions as he received with that Commission. New-York Records, No. 1. Fol. 112.

NOTE—This Commission is likewise entered in the Records of every one of the Three Lower Counties, viz. in Newcastle Records, No. 11. Fol. 82. In Kent Records, No. 14. Fol. 8. And in Sussex Records, No. 17. Fol. 10.

May 28.

Entries in the New York Records, of four Commissions granted by Governor Andros, dated in, and sealed with the Seal of New York. 1. To five Persons to be Justices of the Peace, in the Jurisdiction of Newcastle, and the Dependencies, and three, or more of them, to be a Court of Judicature for one Year. 2. To five more Persons to be Justices of the Peace in the Jurisdiction of Upland Court or County, in Delaware River and Dependencies, (which is the first instance that we have of a Commission in this New County of Upland.) 3. To four more Persons to be Justices of the Peace, in the Jurisdiction of the County of St. Jones, in Delaware Bay and Dependencies; the same to begin from the South Side of Duck Creek, so to extend to the North Side of Cedar Creek. 4. To five more Persons viz. Luke Watson, John Roads, John Kipshaven, Otto Woolast, and William Clarke, to be Justices of the Peace, at the Whore-kill and Dependencies; the said Court to begin at the South Side of Cedar Creek, and so to go downwards. New York Records, No. 1. Fol. 113.

June 1.

The Governor's Certificate and Dedimus, dated in New York, importing, that John Roads, one of the Justices of the Whore-kill Court, having taken his oath for the same, the Governor

authorised him to administer the Oaths to the other Magistrates. *Sussex Records*, No. 17. Fol. 11.

Same Day.

The Governor's Order, dated in New York, reciting, that there was, heretofore, granted unto John Morgau, and John Denny, 300 Acres each, on the West Side of Delaware River, towards the Mouth thereof, near Duck Creek, which have never been improved, and the Persons are dead: now, upon Application of Ephraim Herman, that he may have the said two Pieces, I hereby grant the same, to be confirmed to him by Patent, when the old Patents shall be delivered in. *New York Records*, No. 1. Fol. 113.

Same Day.

The Governor's other Order, alike to the former in all Respects, being in Favour of Lausa Cock, for 600 Acres on the West Side of Delaware River, and on the North Side of Duck Creek. *New York Records*, No. 1. Fol. 113.

June 12.

The Governor's Warrant, dated in New York, directed to Captain Edmund Cantwell, Sheriff of Newcastle on Delaware, requiring him to summon Jacob Young, to appear personally before the Governor, and his Council, to answer for presuming to treat with the Indians, within this Government, without any Authority, to the Disturbance thereof. *New York Records*, No. 1. Fol. 114.

Same Day.

Governor Andros's Commission, dated in New Jersey, authorising Ephraim Herman to be Surveyor for Newcastle, and Precincts, as also for St. Jones, and Dependencies, to lay out Land, as a Surveyor ought to do, in Places not taken up, according to such Warrants as you shall receive from myself, or, upon extraordinary Occasions, to fit Persons as shall apply for the same; of which, to make due Returns to the Secretary's Office at New York, according to Law. *New York Records*, No. 1. Fol. 114.

This Commission is also entered, being there recorded by Order of Court, of 3 November following, in *Newcastle Records*, No. 11. Fol. 85.

June 17.

A Special Court was held for the Whorekill, for the Establishment of the new Justices, and they were there sworn by Mr. John Roads, whom the Governor had before qualified and authorised thereto. *Sussex Records*, No. 17. Fol. 11.

July 10.

An Original Indian Deed of Sale, (upon Half a Sheet of Paper) whereby Kanockere, Aloni, Eliggene, Nogeotto, Towis, Wipaycan and Winappanegge, for themselves, and their Heirs, alienate, bargain, and sell, unto Mr. John Moll, of the Town of Newcastle upon Delaware River, in the Behalf of all the Inhabitants dwelling at Case and Broett Island, Red Clay Creek, and White Clay Creek, quite unto the Falls thereof, which are already settled, and shall settle hereafter, upon any of the said Lands about Christianna Creek, as far as the Precincts of Maryland, the Land called Musser Cripple, therein included; to hold, free of the Claims of all Indians, and their Heirs; and that, for a valuable Consideration, in real Satisfaction, paid to the Indians by the said John Moll, as well for his own proper account, as also for the proper Account of all the present, and all future Settlements, and Inhabitants, in all those Parts. Given under our customary Mark in Newcastle. 10 July, 1680. Pensilvania Exhibits, F. F.

NOTE—John Moll, the Grantee, appears to have been one of the Justices of Newcastle, as long as they had had any Commissions from the Duke of York; and generally, at the Head, or first, of the Commission; and the above Deed appears to be witnessed by J. de Haes, who also appears to have been, very long, one of the Justices of Newcastle.

Aug. 21.

A Meeting of the Justices was held in Newcastle, when they writ a Letter to the Governor at New York, and sent it by Ephraim Herman their Clerk, in relation to Captain Collier's Account, (who seems to have had a Demand upon the Publick.) They tell the Governor there was never any other Tax, or publick Levy laid at Newcastle, than in 1677, which was with his own Approbation, and on Account of the Wolves Heads; and at the same time were collected the Fines, whereof an Account was then also sent him. We have perused Captain Collier's Accounts, the Article therein for Wolves Heads the Sheriff will pay; as also for repairing the Dyke, the several Persons will pay; and for the rest of Captain Collier's Account, we know not which way it may be paid, having now, nor before, any Cash, or publick Store to pay the same. The 25 per Cent. charged by Captain Collier, for collecting the Wolf, the Dyke, and Fine Money, we desire the Governor to regulate, as he shall think just and equitable. Newcastle Records, No. 11. Fol. 83.

1680, *Aug. 26.*

From Kent Records, a Warrant signed by their Clerk, and directed to Cornelius Verhoof the Surveyor, that it was granted

to lay out for—Raynier Williams, and Johannes Kypp, the Quantity of 800 Acres of Land, in any Part of that County, or Precincts, not already granted, and to make return of the Certificate of the Survey of the said Land into the Office in six Months, it being formerly granted from the Court. Kent Records, No. 14. Fol. 16.

Sept. 22.

At a Court held before the Justices for the County of St. Jones's it being proved in Court, that Robert Willing had abused his Royal Highness's Justices of the Peace, by saying he wondered the Duke of York was such a Fool, as to make such inconsiderable Sons of Whores Justices, the Court condemn him to pay 500 Pound of Tobacco to the Use of the Publick, and to be bound over to the Peace for a Year and a Day, and pay the Costs. Kent Records, No. 14. Fol. 9.

Oct. 4.

Two Warrants, or Orders, signed by Governor Andros, the one directed to the Magistrates of the Court of Newcastle, the other to the Magistrates of the Court of Upland in Delaware River: he says, that being informed of some Differences, in passing Captain Cantwell, the Sheriff of Delaware's Accounts, for collecting the Assessments, Amerciaments, and Fines, there is allowed to the petty Constable 12d to the high Constable 6d. and to the Sheriff 6d. in all, 2s. per Pound, according to the Directions in the Law, which he is to have accordingly, and no more, notwithstanding any greater Latitude formerly given, upon Misinformation, contrary to Law. New York Records, No. 1. Fol. 118.

NOTE—This last Order is also entered in Newcastle Records, No. 11. Fol. 84.

Oct. 4.

Another Order sign'd by Governor Andros at New York, reciting, that by the Accounts of Captain Cantwell, Sheriff of Delaware, there remains due to him for Disbursement, 59*l.* 16*s.* 7*d.* $\frac{1}{2}$. the Governor orders Ephraim Herman, Collector of the Quit Rents at Delaware, to pay Cantwell that Sum, out of Arrears due for Quit Rents from Cantwell, and others in said River, particularly for two Parcels of Land of 800, and 900 Acres in Apoquinemen, formerly taken up, and patented, by Cantwell in the Year 1676. New York Records, No. 1. Fol. 118.

Oct. 5.

From New York Records, the Entry of a most Solemn Court of General Assize, held in that City, which being opened, &c., they proceeded to try the following Cause. John Stevens, Ap-

pellant; John Richardson, Defendant. An Appeal from a Verdict and Judgment given at the Court of the Whorekill, in Feb. 1679, for the Defendant, for Title of Land, called Willingbrook, first surveyed for, seated, and improved by the Defendant; upon full Hearing of Proceedings of said Court, and what could be alleged by both Parties, their Evidences and Proofs, the Court confirms the said Judgment, and that the Defendant have and enjoy all the Land he hath seated and improved, with the buildings thereon; the Appellant to pay Costs. New York Records, No. 1. Fol. 115.

Oct. 6.

Also, at the same Court of Assizes, the next Day. Peter Gronendike, Appellant; John Vines, Defendant. An Appeal, from a Verdict and Judgment obtained by the Defendant against the Appellant at a Court held at Deale. [this was formerly Whorekill, but now named Deale—as you'll see when you come to the 15th of December,] for the Town and County of Deale, the 15th of June last, on an action commenced by the Appellant against the Defendant, as Sheriff, for Refusal to give him Satisfaction for an Execution, by him levied on the Estate of John Avery, according to an Order of the Governor and Council, and neglecting to perform his Office and Duty therein, which the Defendant pleaded he had done according to Law: Proceedings of said Court, with several Depositions read, and Parties fully heard, and Matter debated. The Court give their Judgment, that the Defendant, as Sheriff, has fully performed his Office and Duty therein; therefore, confirm the said Judgment given at Deale Court. The Appellant to pay all Costs. New York Records, No. 1. Fol. 116.

Also Mr. John Moll, Justice of the Peace, and President of the Court at Newcastle, being called to answer an Indictment exhibited against him, by one Abraham Mann, for Words spoken in Court, and at other Times, to which Moll pleaded not guilty; and a Jury being impanelled and sworn, with several Evidences, they brought in their Verdict, and found him guilty of speaking the Words, in the first and second Articles, and of denying Execution, when demanded, mentioned in the 4th Article, and for the rest, not guilty. Which the Court taking into Consideration, do adjudge the said Indictment to be illegal and vexatious, and that Moll, by what found against him, is not guilty of any Crime, or Breach of any known Law, therefore, acquit Moll from the same, and order Mann to pay the Costs of Court. Mann moved for an Appeal for England, which is granted, he giving sufficient Security to the Value of 1,000*l.* to prosecute the same, and pay Damage to the Party, if cast. New York Records, No. 1. Fol. 117.

Oct. 11.

The Governor's Warrant, to lay out Lands at Delaware, dated at New York, reciting, that John Richardson having obtained, at the Court of Assizes, a Judgment for the Land he had seated and improved, and having a considerable Number of Hands, therefore to lay him out 1200 Acres thereto adjoining. Also to lay out to John Stevens 1200 Acres of Land adjoining, and to make Returns of the Surveys, in order to Confirmation, according to Law. New York Records, No. 1. Fol. 118.

Nov. 13.

Copy of Minutes of the Governor and Council at New York of this Date, entered in the Sussex Records, purporting to have been made upon an Application of the Magistrates and Court of the Whorekill, signifying the Necessity and Want of a Court house, Prison, Stocks and Whipping-post, for the Publick Service, and desiring to be empowered to rate the Inhabitants there to pay for the same. Granted for the Prison and Stocks, for which they are to make an equal Rate according to Law. Sussex Records, No. 17. Fol. 10.

Nov. 15.

From the New York Records, a Letter from Governor Andros in New York to the Magistrates and Court at the Whorekill, and St. Jones, with an Entry that the like Letter was sent to the several Magistrates and Courts in their respective Precincts throughout the Government——Telling them that he had received Orders, and was going for England; upon which he had sent, and ordered a General Court or Meeting of the Justices, to be at New York the 17th Instant, excusing them by reason of the Distance and Season of the Year; also that he designed to leave Captain Brockholes his Lieutenant, as last time; likewise that Mr. John Lewin, a Gentleman sent by the Duke, was arrived, authorised to inspect the Revenue, as by his Commission, of which the Governor sends them a Copy. New York Records, No. 1. Fol. 119.

NOTE—a Copy of this Letter is also entered in Sussex Records, No. 17. Fol. 13. and another Copy of the like Letter, only dated the 23d of December, is entered in Newcastle Records, No. 11. Fol. 86.

Nov. 17.

From the Records in Kent County, Entry of the Acts of Court held before the Justices for St. Jones's County, upon the several Petitions of the alter-named Persons, the Court grants to them, separately, Liberty to take up, within the Limits and Precincts of their Court: Then they name 16 Persons, and

the Quantity of Land, for them all, amounted to 9500 Acres; And the Court makes an Order, that all Persons taking up Lands, in Default of Settlement and Improvement within one Year after the Date of the Survey, shall forfeit their Interest in the same. Kent Records, No. 14. Fol. 10.

Dec. 15.

An Act of the Court, entered in the Sussex Records, for that the Governor of New-York has made an Alteration of the Name of this Town and County, and instead of the Whorekill to be from henceforth called by the Name of Deal; The Court orders and decrees that it be so called from this Day. Sussex Records, No. 17. Fol. 14.

Dec. 21.

From the Records in Kent County, Entry of the Acts of Court held before the Commissioners for St. Jones's County; whereby, on the Petitions of sundry Persons, the Court grants to each of them Liberty to take up, within the Limits and Precincts of that Court, the Quantities of Land there specified, naming 33 Persons, and the whole Quantity amounts to 18,663 Acres. And on the Petition of Verhoof, that by an Order of the Whorekill Court of the 11th of February last, he was to have his Land surveyed again; but since that the Governor was pleased to divide St. Jones from Whorekill County, and the Survey not being accomplished before the Division, he prays this Court to order a Confirmation of the Order of the Whorekill Court; and accordingly the Court does confirm it, and the Petitioner is to have his Lands surveyed. Like wise a Letter of Attorney from Nicholas Bartlet of St. Jones's County in the Province of New York, to his Wife, was this Day acknowledged in open Court and entered. Kent Records, No. 14. Fol. 11, 12.

Dec. 30.

A Grant from Governor Andros, to Peter Gronendike, for Land on West Side of Delaware Bay, and on North Side of Murder-Creek, containing 413 Acres. Quit-Rent 4 Bushels. New York Records, No. 1. Fol. 114.

Jan. 1.

From Sussex Records Entry of Acts of Court held before the Commissioners relating to the Court house, Stocks, Prison, &c. which the Governor of New York ordered to be built for the Service of the said Country. And, upon the Complaint of Parret the Indian Schaackamaker, alledging, that Henry Bowman and others takes his Land, and gives him no Satisfaction for it, the Court orders that every Person that seats any Land,

shall pay the Indian Proprietor: for 600 Acres or under, one Match-coat; and, if above 600 Acres, two Match-coats; and, at the time of the Indians's receiving the Coats, he is to convey the Land to the Person he receives the Coats of; and if any Person refuses to pay the Indians for the Land as aforesaid, Execution to be given out for the same, directed to the Sheriff, to execute and pay to the Indian. After which (at Fol. 16) follow several other Acts or Orders, that several Certificates, which Cornelius Verhoofe this Day presented to the Court to be signed and allowed by the Court, be certified, except two that have taken in other Persons Lands. And two Entries that Parret the Indian Shackamaker acknowledged in open Court, that he had sold, unto Henry Bowman, the Indian Right of 1000 Acres and 700 Acres between Slaughter-Branch and Cedar-Creek. Sussex Records, No. 17. Fol. 14. and Fol. 16.

Jan. 31.

Upon the Kent Records, a Letter from Ephraim Herman to (some) Gentlemen, complaining that several of the People refuse to pass their Bills for the Payment of the Surveyors Fees established by the Governor; and more, he admires that, as he hears, Clerks Fees are to paid in Tobacco at 12^l, 6d. per. Hundred: It seems (says he) as if his Royal Highness's Laws were slighted or contradicted; and, for any to make Laws, or By-laws, without the Governor, or Court of Assizes Law and Approbation, is a Contempt of Authority, and I suppose it will be found so. Sirs, The Law expressly says that all Fees shall be paid in Silver, Beaver, Wampum, or Wheat: one of which I may, not only by Law, but also by the Governor's distinct Order, insist on: but, because the Country does not plentifully afford the same, I am willing to take the Produce of the Country, which is Pork, at a reasonable Rate, and should be ready to take Tobacco, if it was like to be worth any thing. If I am denied what the Law and Reasons allows, I shall desist for a while, and make the Case known to the Governor or his Deputy: I pray, Sirs, you would right me, where I am wronged, it being your Places so to do; I hope to be with you and attend at March Court next.

Mar. 4.

Matters having passed in America as herein before stated, it was upon this Day that King Charles the Second granted, by Charter, the Province of Pensilvania to Mr. Penn: That was not a sudden unadvised Act, but went through, for nine Months before, a very serious Examination on the Part of the Crown; and not only so, but the Duke of York, and the Lord Baltimore's Agents, were, from time to time, consulted thereon. I

would not so servilely adhere to the Regularity of giving every Paper according to its Date, as to intermix the Papers which, on this Occasion, past in England, for nine Months now past, along with those Papers of the ordinary Occurrences in America. in that Period of Time; but, as these Papers, preparatory to Mr. Penn's Charter for Pensilvania, are exceedingly material, almost every single Word of them, I, therefore, chose to throw them all together, under this (marginal) Date, at the same time giving you the real Dates of all the same, and the Contents as follows, viz.

*For the
The Humble Ad
Son to Sir W*

Sheweth,

That having
in Ireland by the Oppression of the Lord
decease (though most of it remitted by
to borrow every Penny of it, by reason
England was under the Stop of the Ex
with the growing Interest of it, and 9 ye
for the Relief of his own, and his Mother's
Ruine.

He Humbly prays that
that Princely Respect he of
his Compassion to the Afflicte
America, lying North of M
River, on the West, limnit
extend as far as plantable,
he doubts not by his Intere
profitable Plantation to the
to raise that speedy and sufficient
Incumbrances, that he may
Debt of, at least 11,000*l.* and be
and Time as shall be most

And

The foregoing imperfect Paper (one half of it being worn away) remains in the Books at the Board of Trade, is spoke to by Mr. Gallibrand, as Mr. Penn's original Petition for a Grant of Pensilvania, and is the Exhibit, Botra No. 26.

1680, *June 14.*

In the Councel-Chamber, Monday the 14th of June 1680. Present Lord President, Duke of Albemarle, Bishop of London, Mr. Secretary Jenkins, Sir T. Chicheley: The Petition of William Penn, referred by an Order from the Earl of Sunderland of the first Instant, is read, praying, in Consideration of Debts

due to him, or his Father, from the Crown, to grant him Letters Patent, for a Tract of Land in America, lying North of Maryland, on the East bounded with Delaware River, on the West limited as Maryland, and Northward to extend as far as plantable; Whereupon, Mr. Penn is called in, and, being asked, what Extent of Land he will be contented with Northerly? declares himself satisfied with three Degrees to the Northwards; and that he is willing, in lieu of such a Grant, to remit his Debt, due to him from his Majesty, or some Part of it, and to stay for the Remainder till his Majesty shall be in a better Condition to satisfy it: Upon the whole Matter, it is ordered that Copies of his Petition be sent unto Sir John Werden, in behalf of his Royal Highness, and unto the Agents of the Lord Baltimore, to the end they may report how far the Pretensions of Mr. Penn may consist with the Boundaries of Maryland, or the Duke's Propriety of New York and his Possessions in those parts. This Exhibit is proved by Mr. Gellibrand, and is Botra, No. 6.

1680, *June 14.*

To Sir J. Werden about William Penn. Council-Chamber, 14th June 1680. Sir, the Right Honourable the Lords of the Committee for Trade and Plantations having received a Petition of William Penn, referred unto them by an Order from his Majesty, concerning a Tract of Land in the North Part of America, which he would undertake to settle, and render it a profitable Plantation to the Crown: But their Lordships have not thought to take any Resolution thereon, before they had first consulted you in relation to the Propriety of his Royal Highness in those Parts: and do therefore command me to send you a Copy of his Petition, here inclosed, with their Desire, that you would report unto them, whether such a Plantation or Settlement would, any ways, intrench upon the Patent of his Royal Highness, or otherwise prejudice the same. I am—Maryland. Whereupon, their Lordships, taking notice of the Neighbourhood of Maryland to the Country he desires to plant, have thought fit to order a Copy of the Petition to be sent you, or such others as are employed here in behalf of the Baltimore, to the end you may acquaint them. This Copy is proved by Mr. Gellibrand, and is Botra, No. 7.

1680, *June 23.*

For William Blaythwaite Esq; Secretary to the Right Honourable the Lords Commissioners for Trade and Plantations at Whitehall. St. James's 23d June 1680. Sir, I had answered your Letter, of the 14th Instant, sooner, but that my going to Windsor just when I received it, hindered me then, and also

made me think it proper to acquaint the Duke with the Contents of it first: What I have now to say is this, that, by all which I can observe of the Boundaries mentioned in Mr. Penn's Petition, they agree well enough with that Colony or Plantation which hath been hitherto (ever since the Conquest of New York by Colonel Nicholls) held as an Appendix and Part of the Government of New York, by the name of Delaware Colony, or more particularly Newcastle Colony, that being the Name of a principal Place in it (the whole being planted, promiscuously, by Swedes, Finlanders, Dutch and English) all which hath been actually under the Government of his Royal Highness's Lieutenant at New-York hitherto: but what are its proper Boundaries (those of Latitude and Longitude being so very little known, or so ill observed, as Experience tells us, in all the Wet-Indies) I am not able to say. If this be what Mr. Penn would have, I presume the Right Honourable the Lords of the Committee for Trade and Plantations will not encourage his Pretensions to it, because of what is above-mentioned, which shew plainly the Duke's Right preferable to all others (under his Majesty's Good-liking) though it should not prove to be strictly with the Limits of the Duke's Patent; but, if it be any other Parcel of Land unimproved, in those Parts, which is without all other Patents, and not interfering with the Possessions of his Majesty's Subjects already settled there, I humbly submit to their Lordships how far they may think convenient (under fitting Restrictions and Qualifications, whereby to tie up the Government of such new Colony, as near as may be to the Laws of England) to recommend the Petitioner's Request to his Majesty: Thus, I think I have, as far as I am able at present, fully answered your Letter upon this Subject; and so I remain, Sir, your most affectionate Friend and Servant, Jo. Werden. This is proved by Mr. Gellibrand, and is Botra, No. 8.

1680, *June 23.*

To Mr. Blaythwaite at his Office in Whitehall, present. Sir, In answer to your's, in reference to Mr. Penn's Petition, some things are thought proper to be offered, in respect to the particular Concern of my Lord Baltimore, something in reference to the Public on his Lordship's behalf. It is desired, that, if the Grant pass unto Mr. Penn, of the Land petitioned for by him in America, that it may be expressed to be of Land that shall lie North of Sasquahanna Fort, and North of all Lands in a direct Line between the said Fort and Delaware River, and also North of all Lands upon a direct Line Westward from the said Fort, for that Fort is the Boundary of Maryland Northward; It is further desired, that there may be contained general

Words of Restriction, as to any Interest granted to the Lord Baltimore, and saving to him all Rights granted; It is also prayed, that my Lord's Council may have a Sight of the Grant before it pass. On the Publick Account, it is offered that some due Caution be provided, that no Arms, Powder, Shot or other Ammunition, be sold by any that shall settle in this new Plantation, to the Indians or Natives; for thereby a common Mischief may happen unto all his Majesty's neighbouring Plantations. This, with our Thanks on my Lord Baltimore's behalf, for your Care on him, is all at present from, Sir, your humble Servants, Barnaby Dunch, Richard Burk. This is proved by Mr. Gellibrand, and is Botra, No 9.

1680, June 25.

Whitehall, Friday 25th of June, 1680. Present, Lord President, Marquis of Worcester, Earl of Clarendon, Mr. Secretary Jenkins. The Petition of Mr. Penn is again read, concerning a Tract of Land to be granted him in America, together with a Letter from Sir John Werden, and another from the Lord Baltimore's Agents, touching the same. And Mr. Penn being afterwards called in, is told, that it appearing by Sir John Werden's Letter, the Part of the Territory desired by him is already possessed by the Duke of York, he must apply himself to his Royal Highness for adjusting their respective Pretensions. And Mr. Penn being also acquainted with the Matter of the Letter from the Lord Baltimore's Agent's he does agree that Susquahannough Fort shall be the Bounds, of the Lord Baltimore's Province. And, as to the furnishing of Arms and Ammunition to the Indians Mr. Penn, declares himself ready to submit to any Restraint their Lordships shall propose. This is proved by Mr. Gellibrand, and is Botra, No. 6.

1680, Oct. 16.

For my Honoured Friend William Blaythwaite Esq; Secretary to the Right Honourable the Lords Commissioners for Trade and foreign Plantations at Whitehall. Whitehall, 16th Oct. (80.) Sir, You heretofore wrote to me, touching Mr. William Penn's Petition, then before the Right Honourable the Lords Commissioners for Trade and foreign Plantations; to which I answered you, as at that time I was obliged to do. Since then, Mr. Penn hath represented to the Duke, his Case and Circumstances (in relation to the Reasons he hath to expect Favour from his Majesty, touching that Request of his) to be such, as that his Royal Highness commands me to let you know (in order to your informing their Lordships of it) That he is very willing Mr. Penn's Request may meet with Success: that

is. That he may have a Grant of that Tract of Land which lies on the North of Newcastle Colony (Part of Delaware) and on the West Side of Delaware River, beginning about the Latitude of 40 Degrees, and extending Northwards and Westwards as far as his Majesty pleaseth, under such Regulation as their Lordships shall think fit. I am, Sir, your very humble Servant, Jo. Werden. This is proved by Mr. Gellibrand, and is Botra, No. 10.

1680, *Nov.* 1.

Whitehall, Thursday the 1st of Nov. 1680. Present, Prince Rupert, Lord Privy Seal, Earl of Bridgewater, Earl of Sunderland, Earl of Halifax, Earl of Clarendon, Earl of Essex, Mr. Hyde, Mr. Godolphin, Mr. Chancellor of the Exchequer. The Petition of Mr. Penn is read, desiring that a Day may be appointed for preparing a Grant unto him of Propriety in a Tract of Land in America upon Delaware River, and their Lordships appoint this Business for Thursday next. This is proved by Mr. Gellibrand, and is Botra, No. 6.

1680, *Nov.* 8.

Copy of a Letter to Mr. Attorney General about Mr. Penn. Council Chamber, the 8th November 1680. Sir, His Majesty having referred the Petition of Mr. William Penn, unto the Lords of the Committee of Plantations, wherein he prays his Majesty to grant him a Tract of Land in Amercia, for the setting a Colony and Plantation there; and their Lordships having received, from him, the Inclosed Draught of a Grant, which he desires may pass to him for the Government of that Colony, have commanded to signify their Desire unto you, that, upon Consideration of the Powers therein proposed, you report unto them, whether you have any thing to object against the same; their Lordships having appointed to meet again upon this Business on Thursday next at Four in the Afternoon. This is proved by Mr. Gellibrand, and is Botra, No. 11.

1680, *November* 11.

Whitehall, Thursday November the 11th, 1680. Present, Lord Privy Seal, Earl of Clarendon, Earl of Halifax, Earl of Bridgewater, Earl of Sunderland, Mr. Secetary Jenkins. Mr. Attorney General presents the Committee with his Observations upon the Draught of Mr. Penn's Patent. This is proved by Mr. Gellibrand, and is Botra, No. 6.

1680, *Nov.* 18.

To Sir J. Werden about Mr. Penn's Patent. Council-Chamber the 18th Nov. 1680. Sir, I formerly sent you the Petition

of Mr. Penn, touching a Tract of Land adjoining to New-York, and received your Answer thereupon, which I presented to the Lords of the Committee of Plantations, and now send you, by their Lordships Order, an Extract of so much of the Patent, which he is soliciting, as concerns the Boundaries, to the end you may make your Objections to it in behalf of his Royal Highness, if you see Cause. The Committee having appointed to take this Business into their further Consideration on Tuesday next at Four in the Afternoon. This is proved by Mr. Gellibrand, and is Botra, No. 12.

1680, *Nov.* 18.

To the Agents of the Lord Baltimore, about Mr. Penn's Grant. Council-Chamber, the 18th Nov. 1680. Gentlemen, On the 14th of June last, I sent you, by Order of the Lords of the Committee for Plantations, the Petition of Mr. Penn, who prays a Charter for making a Settlement Northerly of Maryland; and I received your Answer, in behalf of my Lord Baltimore, on the 23d following, which I accordingly laid before the Committee; since which time their Lordships have perused the Draught of Letters Patent which Mr. Penn desires to have passed unto him, and which, he alledges, was put into your Hands, according to their Directions, in order to receive your Objections, if you had any to make; wherefore, their Lordships command me to give you notice of the Meeting of a Committee on Tuesday next at Four in the Afternoon, for the further Consideration of this Business, and that, in case you have nothing more to offer to their Lordships at that time, they will, thereupon, take their final Resolution concerning the said Patent. I am—This is proved by Mr. Gellibrand, and is Botra, No. 13.

1680 *Nov.* 20.

For my honoured Friend William Blaythwaite Esq; Secretary to the Right Honourable the Lords Commissioners for Trade and foreign Plantations, at Whitehall, St. James's 20th Nov. (80.) Sir, At two of the Clock this Day, I met with your Letter to me, of the 18th Instant, and a Copy in it (which I here return you) of some Part of Mr. Penn's Patent for Land in America. I am, first, to premise to you, that, in cases of this Nature, it were most proper to have the Advice of Council learned in the Laws, for settling the Boundaries of any new Patent, which may be liable to encroach on those of another's Possession. But in regard I remember well the Duke's Directions, (expressed in a former Letter from me to you, by his Royal Highness's Order, dated 16th October (80.) I shall frankly tell you my Thoughts thereupon, viz. That I believe the De-

scription by Lines, of Longitude (especially) and of Latitude, are very uncertain, and so also is it under what Meridian the Head of Delaware River lies, which, I do believe, hath never yet been observed, by any careful Artist; But it being the Duke's Intentions, that Mr. Penn's Grant be bounded on the East-side by Delaware River, and that his South Limit be 20 or 30 Miles beyond Newcastle (which Colony of Newcastle is Northwards, and distinct from Maryland, that being under the Jurisdiction of Lord Baltimore) which Extent Northwards of Newcastle Colony, we guess, may reach as far as the Beginning of the 40th Degree of Latitude; therefore, if Mr. Penn's Patent be so worded, as to leave Newcastle 20 or 30 Miles beyond it free, and to be bounded on the East by Delaware River; I think this is all the Caution that needs, as to the Duke, who will not concern himself how far North or West Mr. Penn's Patent takes in. I am, Sir, your very affectionate Friend and humble Servant, Jo. Werden. This is proved by Mr. Gellibrand, and is Botra 14.

1680, *Nov.* 23.

To my Honoured Friend William Blaythwaite Esq; Secretary to the Right Honourable the Lords Commissioners for Trade and foreign Plantations, Whitehall. St. James's 23d Nov. (80.) Sir, Mr. Penn having fallen into Discourse with me of his Concerns in America, since I wrote to you on Saturday, I have told him the Substance of what I wrote, and he seems to fear that if his South Limits be strictly set at 20 or 30 Miles North from Newcastle Town, he shall have so little of the River left, as very much to prevent the Hopes he hath of improving the rest within his Patent, but, on the other Side, he is willing that 12 English Miles North of Newcastle be his Boundary, and believes that that Distance will fall under the Beginning of the 40th Degree of Latitude; I have already signified to you all I know of the Duke's Mind herein which is, in general, to keep some convenient Distance from Newcastle, northwards, for a Boundary to that Colony, but I confess, I do not understand why'tis precisely necessary to insist on just such a Number of Miles, more or less, in a Country of which we know so little, and when all the Benefits are intended to this Patentee that others enjoy; so as I submit this point to their Lordships Consideration, and do not think it material for me to add more at present from, Sir, your very affectionate Friend and Servant, Jo. Werden. This is proved by Mr. Gellibrand, and is Botra 15.

1680, *Decemb.* 16.

Whitehall, Thursday the 16th Day of Dec. 1680. present.

Prince Rupert, Lord Privy Seal, Marquis of Worcester, Earl of Clarendon, Earl of Halifax, Lord Chamberlain, Earl of Bridgewater, Lord Chief Justice North, Mr. Secretary Jenkins, Mr. Hyde. Mr. Penn is called in, concerning the Patent desired by him, and upon reading the Letters from Sir John Werden touching the Boundaries wherein his Royal Highness may be concerned, their Lordships think it best, for the Settlement thereof, that Sir John Werden be desired to attend, on Saturday next in the Afternoon; at which time the Agent of the Lord Baltimore is likewise ordered to give his Attendance, as to what concerns his Lordship's Propriety of Maryland. This is proved by Mr. Gellibrand, and is Botra No. 6.

1680, *Dec.* 16.

Copy of a Summons to the Lord Baltimore's Agent Mr. Burk, and to Sir John Werden, about Mr. Penn's Patent. Council-Chamber, 16th December, 1680, Sir, The Right Honourable the Lords of the Committee for Trade and foreign Plantations have appointed to hear the Exceptions of my Lord Baltimore, against the Draught of Mr. Penn's Patent, formerly sent to you, upon Saturday the 18th of this Instant at Four in the Afternoon; and you are desired not to fail in your Attendance at that time, their Lordships being then resolved to proceed to a Resolution in that Matter. I am, Mr. Burk—Sir, The Lords of the Committee of Trade and Plantations find it necessary, in order to the Settlement of Mr. Penn's Patent, to discourse with you concerning it, and have therefore commanded to desire you to attend on Saturday the 18th Instant at Four in the Afternoon. This is proved by Mr. Gellibrand, and is Botra No. 16.

(1680, *Dec.* 16.)

Mr. Penn's Boundaries, settled by my Lord Chief Justice North. As the same is bounded on the East by Delaware River from the Beginning of the 12 Miles Distance Northwards of Newcastle Town fortieth Degree of Northern Latitude unto the three and fortieth Degree of Northern Latitude, if the said River doth extend so far Northward; But, if the said River shall not extend so far Northward, then, by the said River, so far as it doth extend, and from the Head of the said River, the Eastern Bounds are to be determined by a Meridian Line, to be drawn from the Head of the said River unto the said three and fortieth Degree. The said Lands do extend Westward five Degree in Longitude, to be computed a Circle drawn

at 12 Miles Distance from Newcastle North-

wards and Westward unto from the said Eastern Bounds, and the said Lands are bounded, on the North, by the Beginning of the three and fortieth Degree of Northern Latitude, and, on the South by _____ by a straight Line _____ the Beginning of the fortieth Degree of Northern Latitude, and then, on, Westwards, to the Limit of Longitude above mentioned. This is proved by Mr. Gellibrand, and is Botra No. 17.

(1680, *Dec.* 16.)

About Mr. Penn's Boundaries. May it please your Lordships, I have considered the Petition of Mr. William Penn, praying his Majesty to grant unto him a Tract of Land in America, lying North of Maryland, bounded on the East by Delaware Bay, to the Westward by the Indian Countries, as Maryland; and do not find that such Boundaries do intrench upon the Lord Baltimore's Province of Maryland, which is bounded Southward by a Part of Virginia, Eastward by the main Ocean and Delaware River, and Northward by that Part of Delaware River that lieth in the 40th Degree of Latitude, and so, by a direct Line, Westward, through the Continent. And the Patent granted to his Royal Highness of New York, being bounded Westward by the East Side of Delaware Bay, is sufficiently distinguished from the Grant desired by Mr. Penn which is bounded Eastward by Delaware Bay, or River; so that that Tract of Land desired by Mr. Penn, seems to be undisposed of by his Majesty, except the imaginary Lines of New-England Patents, which are bounded, Westwardly, by the main Ocean, should give them a real, though impracticable Right, to all those vast Territories. But, I am further to offer unto your Lordships, that there are several Dutch and Swedish Plantations, which have been long under the English Government, that lie scattered on the Westward of Delaware River, and some of them perhaps within the Bounds of Mr. Penn's Petition, and have, for a long time, either acknowledged the Protection of his Royal Highness, who took them from the Dutch upon the Conquest of New-York, or of the Lord Baltimore, near whose Borders they are settled: And how far Mr. Penn's Grant may, in this Consideration, concern his Neighbours, is most humbly submitted to your Lordships. This is proved by Mr. Gellibrand, and is Botra No. 18.

1680, *January* 15.

Whitehall, Saturday the 15th of January 1680-1. Present, Prince Rupert, Lord Privy Seal, Marquis of Worcester, Lord Chamberlain, Earl of Bridgewater, Earl of Clarendon, Viscount Fauconberg, Mr. Finch, Lord Chief Justice North, Mr.

Chancellor of the Exchequer. The Boundaries of Mr. Penn's Patent, settled by my Lord Chief Justice North, with the Alterations of Sir John Werden are read and approved. And their Lordships appoint Wednesday next, at Nine in the Morning, to review the whole Patent. This is proved by Mr. Gellibrand, and is Botra No. 6.

1680, *Jan. 22.*

Whitehall, Saturday the 22d of January 1680-1. Present, Lord Privy Seal, Earl of Clarendon, Mr. Hyde, Lord Chief Justice North, Mr. Seymour, Mr. Secretary Jenkins. Upon reading the Draught of a Patent for Mr. Penn, constituting him absolute Proprietary of a Tract of Land in America, Northerly of Maryland, The Lords of the Committee desire my Lord Chief Justice North to take the said Patent into his Consideration, and to provide, by fit Clauses therein, that all Acts of Sovereignty as to Peace and War, be reserved unto the King; and that all Acts of Parliament, concerning Trade and Navigation and his Majesty's Customs, be duly observed; and, in general, that the Patent be so drawn, that it may consist with the King's Interest and Service, and give sufficient Encouragement to Planters to settle under it. A Paper being also read, wherein my Lord Bishop of London desires that Mr. Penn be obliged by his Patent to admit a Chaplain of his Lordship's Appointment upon the Request of any Number of Planters; the same is also referred to my Lord Chief Justice North. This is proved by Mr. Gellibrand, and is Botra No. 6.

1680, *Feb. 24th.*

Whitehall, Thursday the 24th of February 1680-1. Present, Lord President, Earl of Conway, Earl of Clarendon, Earl of Chesterfield, Mr. Secretary Jenkins. A Draught of a Patent for Mr. Penn is read, and there being a Blank left for the Name, their Lordships agree to leave to Nomination of it to the King. The Lord Bishop of London is desired to prepare the Draught of a Law, to be passed in this Country, for the settling of the Protestant Religion. This is proved by Mr. Gellibrand, and is Botra No. 6.

1680, *Feb. 24.*

May it please your Majesty, In obedience to your Majesty's Order, signified unto us by the Earl of Sunderland on the first of June last, We have prepared the Draught of a Charter, constituting William Penn Esq; absolute Proprietary of a Tract of Land in America therein mentioned, which we humbly present to your Majesty for your Royal Approbation, leaving also the naming of the said Province unto your Majesty, which is

most humbly submitted. This is proved by Mr. Gellibrand, and is Botra No. 19.

33 *Car.* II. 1680.

Charles the Second, by the Grace of God King of England, Scotland, France and Ireland, Defender of the Faith, &c. To all whom these Presents shall come Greeting.

Mar. 4.

Whereas Our Trusty and Well-beloved Subject William Penn Esq; Son and Heir of Sir William Penn deceased, out of a commendable Desire to enlarge our English Empire, and promote such useful Commodities, as may be of Benefit to us and our Dominions, as also to reduce the savage Natives, by gentle and just Manners, to the Love of Civil Society and Christian Religion, hath humbly besought Leave of us to transport an ample Colony unto a certain Country, herein after described, in the Parts of America, not yet cultivated and planted; And hath likewise humbly besought our Royal Majesty to give, grant and confirm all the said Country, with certain Privileges and Jurisdictions requisite for the good Government and Safety of the said Country and Colony, to him and his Heirs for ever;

Know ye therefore, that we, favouring the Petition and good Purpose of the said William Penn and having Regard to the Memory and Merits of his late Father in diverse Services, and particularly to his Conduct, Courage and Discretion, under our dearest Brother James Duke of York, in that signal Battle and Victory fought and obtained against the Dutch Fleet commanded by the Heer Van Obdam in the Year 1665,

In Consideration thereof, of our special Grace, certain Knowledge and meer Motion, have given and granted, and, by this our present Charter, for us, our Heirs and Successors, do give and grant, unto the said William Penn, his Heirs and Assigns,

All that Tract or part of Land in America, with all the Islands therein contained, as the same is bounded, on the East, by Delaware River, from 12 Miles Distance Northwards, of New-castle Town unto the three and fortieth Degree of Northern Latitude, if the said River doth extend so far Northwards; but if the said River shall not extend so far Northward, then, by the said River, so far as it doth extend, and, from the Head of the said River, the Eastern Bounds are to be determined by a Meridian Line to be drawn from the Head of the said River unto the said three and fortieth Degree: The said Lands to extend Westward five Degrees in Longitude, to be computed from the said Eastern Bounds; and the said Lands to be bounded, on the North, by the Beginning of the three and

fortieth Degree of Northern Latitude, and, on the South by a Circle, drawn, at 12 Miles Distance from Newcastle, Northwards, and Westwards, unto the Beginning of the fortieth Degree of Northern Latitude, and, then, by a straight Line, Westward, to the Limit of Longitude above mentioned.

We do also give and grant, unto the said William Penn, his Heirs and Assigns, the free and undisturbed Use and Continuance in, and Passage into, and out of, all and singular Ports, Harbours, Bays, Waters, Rivers, Isles, and Inletts, belonging unto, or leading to and from the Country or Islands aforesaid; and all the Soyl, Lands, Fields, Woods, Underwoods, Mountains, Hills, Fens, Isles, Lakes, Rivers, Waters, Rivulets, Bays and Inletts, situate or being within, or belonging unto, the Limits and Bounds aforesaid; together with the Fishing of all Sorts of Fish, Whales, Sturgeons, and all Royal and other Fishes in the Sea, Bays, Inletts, Waters or Rivers within the Premises, and the Fish therein taken, and also all Veins, Mines and Quarries, as well discovered as not discovered, of Gold, Silver, Gems and Precious Stones, and all other whatsoever, be it Stones, Metals, or of any other Thing or Matter whatsoever, found or to be found, within the Country, Isles, and Limits aforesaid.

And him the said William Penn, his Heirs and Assigns, we do, by this our Royal Charter, for us, our Heirs and Successors, make, create and constitute the true and absolute Proprietaries of the Country aforesaid, and of all other the Premises. Saving always to us, our Heirs and Successors, the Faith and Allegiance of the said William Penn, his Heirs and Assigns, and of all other the Proprietaries, Tenants and Inhabitants, that are, or shall be, within the Territories and Precincts aforesaid; And saving also, unto us, our Heirs and Successors, the Sovereignty of the aforesaid Country.

To have, hold, possess and enjoy the said Tract of Land, Country, Isles, Inletts, and other the Premises, unto the said William Penn, his Heirs and Assigns, to the only proper Use and behoof of the said William Penn, his Heirs and Assigns, for ever, To be holden of us, our Heirs and Successors, Kings of England, as of our Castle of Windsor in our County of Berks, in free and common Socceage, by Fealty only for all Services, and not in Capite or by Knight's Service.

Yielding and paying, therefore, to us, our Heirs and Successors, two Beaver Skins, to be delivered at our said Castle of Windsor, on the first Day of January in every Year: And also, the fifth Part of all Gold and Silver Ore which shall from time to time happen to be found within the Limits aforesaid, clear of all Charges.

And, of our further Grace, certain Knowledge and meer Motion, we have thought fit to erect, and we do hereby erect, the aforesaid Country and Islands into a Province and Seigniory, and do call it Pensilvania. And so, from henceforth, we will have it called, &c. Original Charter under the Great Seal.

It may be proper to observe here, that there is, at the Board of Trade, a very beautiful Map of Maryland, but very ill drawn, of which we have proved a Copy: it must have been, at least, as ancient at this Time, because it takes no notice at all of Pensilvania: By it, the Eastern Side of the Peninsula is plainly left as void and unsettled, whereas all the other Parts are extremely full of Names of Places. This Map lays down neither Cape Cornelius, not Cape Hinlopen, and it makes the Line of the 40th Degree compleat to be a little above Newcastle Town, but a great deal above the Heads of both Bays, and it makes the apparent Isthmus or Neck, which joins the Peninsula to the main Continent, to be about 18 Miles below Newcastle: but, although a beautiful Map to look at, it's done with no sort of Truth. We have proved a Copy of this Map, by Mr. Mathias, and it is———Exhibit, Botra No. 25.

1681. *Mar.* 30.

From the New York Records, the Entry of a Letter, dated at New York, and directed to the Justices and Court at the Whorekill: It's signed only shortly A. B. (which we shall see by and by was Anthony Broekholts the Commander, left there by Sir Edmund Andros) He tells them he has received theirs of the 21st, with a Complaint of several Misdemeanours against the Clerk of the Court, for which they sayd they had been obliged to turn him out; But you had done well (says he) had you sent the Cause hither, before you suspended him, it being a Matter rather becoming the Power of some higher Judicature, and not so fitting for yourselves, who were the Accusers, to judge of; however, I am inclinable to believe you did not do it without full Examination into the Truth: and, in hopes of Amendment for the future, am willing to pass it by; to which you have made a good Step in the Choice of William Clark, a Person I judge capable enough, and could well approve of for a Continuance, were he not one of your Bench, which is not practicable in any Part of this Government; however, he may officiate till further Order. New York Records, No. 1. Fol. 119.

Apr. 8.

At a Court held in Newcastle, Present Captain John Lewin, his Royal Highness's Agent, the Justices and Captain Cantwell the Sheriff, Captain Lewin produced his Commission from the

Duke, and, understanding it had been publickly read here in Court, demanded whether any body questioned the same, but none appearing it was ordered that it should be recorded. Newcastle Records, No. 11. Fol. 87.

Apr. 23.

From the Kent Records, a Bill of Sale, acknowledged in open Court, and recorded, whereby John Briggs, of St. Jones' County in the Province of New York, assigns some Patent and the Benefit of it, unto Henry Stevenson. Kent Records, No. 14. Fol. 14.

Apr. 23.

From the Kent Records, an Entry of a Bond of this Date, whereby, according to that Court's Order, the Appellant Cornelius Verhoof, with two Securities, entered into Bond to the Court of St. Jones's County, of 200*l.* New York Money, for answering the Appeal granted in the Action of Johannis Kypp and Raynier Williams, at the next High Court of Assizes at New York, and abiding the final End and Determination of that Court. And on the other hand, another Bond from Johannis Kypp and Partners to the said Court of St. Jones's County, in 200*l.* New York Money, conditioned to appear and answer the said Appeal at the next Court of Assizes at New York, and to abide by the final Determination of that Court. Kent Records, No. 14. Fol. 17.

May. 6.

A Re-survey, made by Ephraim Herman, Surveyor, for John Barentson, according to a Patent from Governor Lovelace, of Land granted to Geritt Sanderson, and by him sold to the said John Barentson, lying on the West side of Delaware River above Newcastle, at a Place called Swanwick. Newcastle Records, No. 11. Fol. 88.

July 19.

At a Meeting of the Justices of St. Jones's County, Ephraim Herman, the Surveyor, made Returns of the following Surveys, made for divers Persons there named, according to the several Warrants from this Court directed to him; Then they enumerate the Names of 23 Persons, and their respective Quantities of Land, which altogether amount to 14,247 Acres. Those 23 Certificates, Plotts, and Surveys, were overlooked and perused by the Magistrates, and were by them allowed, and the Clerk John Brinckloe ordered to cause the same to be recorded upon the Records, and, after that, to certify to the Governor, on every of the said Certificates, that they were approved of by the Court; and then to be sent to New York, for further Confirmation thereof by Patent. Kent Records, No. 14. Fol. 18.

Aug. 15.

From the New York Records an Order, dated in New York, signed shortly A., B. but there said to be made by the Commander in Chief, directed to the Magistrates, Court and Sheriff at Dead alias Whorekill, Delaware: recites, that Complaint had been made to the Commander, that Cornelius Verhoof, though dismiss'd from being Clerk of the Court, and another appointed in his stead, detains and refuses to deliver the Records and Papers belonging to the said Court; Therefore, in the King's Name authorising and requiring the Magistrates, Court, and Sheriff, to demand them, to search for them in all Places, and, if found, to deliver them to William Clark, the present Clerk; but if not found, to bind Verhoof over, to the general Court of Assizes, to answer the same. New York Records, No. 1. Fol. 119.

1681. *Aug. 21.*

From New York Records the following Entry. These following Accounts recorded for Mr. Philip Wells in behalf of Sir Edmund Andros. New York, Anno 1681. Aug 21. Account of Debtors standing out, &c. for Account of his Royal Highness James Duke of York, &c. Among other Articles in said Account of outstanding Debts to his Royal Highness is the following one, For Quit-Rents at Delaware Ephraim Herman is to give account of. New York Records, No. 1. Fol. 120.

Aug. 27.

From the New York Records, the Duke of York's Order, dated at Edinburg, directed to Lieutenant Broekholls. Being informed that most, if not all the Commissions of the Peace and Magistrates, in the City and Province of New York, and Dependencies, do expire, ere long; I signify to you, that the present Justices and Magistrates are to continue in the Exercise of their respective Functions until further Order; and in case of any Want of them, by Death or otherwise, their Places to be supplied, from time to time, by you and the Council. New York Records, No. 1. Fol. 120.

Octob. 5.

In the Kent Records, an Entry of an Act of the General Court of Assizes held at New-York this Day, attested by the Clerk of the Assizes, that in the Cause Cornelius Verhoofe Appellant Johannes Kypp and Raynier Williams Defendants, the Appellant not appearing to prosecute his Appeal according to Law, the Court ordered him to be nonsuited, and to pay Costs. And, underneath that Entry, another Entry or Minute; Execution taken out upon the Order of April Court 1681. Kent Records, No. 14. Fol. 19.

Nov. 11.

From the Newcastle Records, a Letter, writ by the Justices, directed to the Right Honourable Captain Anthony Brockholts, Deputy Governor in New York, acquainting him, that at their ordinary Court Day, on the 1st Instant, Francis Jackson, Servant to Abraham Man, appeared in Court, and there delivered a Paper signed by his Master, whom we resolved to send for and proceed against; to which purpose we issued a Warrant, but the said Man made his Escape from the Under-Sheriff, and keeps at present in Pensilvania and Burlington: We send your Honour, enclosed, the Copies of all the Papers and other Proceedings, and desire your Honour's further Order and Instructions for our further Rule in this and the like Occasions. The Proclamation which Mr. Moll brought along with him, is published. Newcastle Records, No. 11. Fol. 89.

Nov. 21.

From New York Records, an Entry of Deputy-Governor Anthony Brockholts's answer, signed by him, and directed to the Magistrates and Court at Newcastle Delaware. Says he has received theirs of the 11th, with the enclosed Writing about Abraham Man, whom you did well to prosecute, but your Officers were not so careful as they ought, in the Service of the Warrant. His Offence being great, I have wrote to the Governor of Pensilvania, that, if he abscond in that Government, Enquiry may be made, and he delivered to you. If he be submissive, you may bind him over, on good Sureties, to the next General Court of Assizes, to answer the same; but, if he be stubborn, send him hither, that he may not longer disturb the Peace and Quiet of your Parts, which shall always endeavour to preserve: hope you'll do your Parts, that all Offenders in the like Nature may have their due Punishment, and the Authority of the Government maintained and supported. New York Records, No. 1. Fol. 120.

NOTE—The same Letter is also entered in Newcastle Records, No. 11. Fol. 91.

Dec. 6.

At a Court held before the Justices in the Town of Newcastle, upon several Petitions presented to them, the Court granted to Benjamin Gmly to take up 200 Acres, Ephraim Herman 400 Acres, Casparus Herman 400 Acres. and to Joseph Burnham a Lot within the Town of Newcastle. Newcastle Records, No. 11. Fol. 90.

Jan. 26.

From the New York Records a Letter from Captain Brockholts, dated in New York, and directed to Mr. Ephraim Her-

man, owns the Receipt of his of the 16th and 27th of December, and tells him that he has sent him enclosed an Order for collecting and receiving the Quit-Rents, and Arrears, due in Delaware River and Dependencies, as formerly, as well of what was in Arrear for that Part of the River now called Pensilvania; Of which have wrote to Governor Markham, desiring him to assist you therein. As to the Desire of the Magistrates, to join, to lay out the twelve Miles above Newcastle, it is not within their Cognizance, but, if necessary, and desired here, shall appoint as may be most proper. New York Records, No. 1. Fol. 121.

Same Day.

Captain Brockholl's Commission or Warrant, dated in New York, and directed to Ephraim Herman, Collector and Receiver of the Quit-Rents in Delaware River, recites that he had been formerly appointed Collector and Receiver of the Quit-Rents due in Delaware River and Dependencies; and several Sums being due and in Arrear for the same, as well in that Part of the River now called Pensilvania, as the other Parts thereof; he therefore authorises Herman to continue to collect and receive the same, till further Order; remitting it to Captain Brockholts, together with an Account thereof, as often as Opportunity. New York Records, No. 1. Fol. 121.

Same Day.

Captain Brockholl's Letter, dated at New York, to the Governor of Pensilvania, acquainting him what Authority he had continued to Hermans; and being informed that several Persons, now under your Government, are in Arrear for the same, do desire your Favour and Assistance to the said Collector in the Receipt thereof; assuring you I shall be ready, on all Occasions, to serve you, &c. New York Records, No. 1. Fol. 121.

Feb. 1.

From Sussex Records, the Entry there, of a Bill of Sale, from John Oakey of Deal County in the Province of New York, to John Kiphaven and Alexander Moulston of a Lot of Land. Sussex Records, No. 17. Fol. 15.

March 12.

From Kent Records, A Deed of Conveyance of Lands, acknowledged in open Court, and recorded from John Burton to Daniel Jones, wherein the said John Burton describes himself of St. Jones's in the Province of New York. Kent Records, No. 14. Fol. 20.

1682. *June 21.*

From Kent Records, A Contract, acknowledged in open

Court, and recorded, being for Sale of Lands on the North Branch of Duck Creek, from John Hilliard to Simon Hiron; wherein Hilliard writes himself of St. Jones's County in the Province of New York, and, when Hilliard obtains a Patent for the same, out of the Office at New York, he shall make further Assurance. Kent Records, No. 14. Fol. 21.

Aug. 11.

From Kent Records, and Assignment, acknowledged in open Court, and ordered to be recorded, from Thomas Heathard of the County of St. Jones in the Province of New York, to Samuel Mott. Kent Records, No. 14. Fol. 22.

Aug. 14.

From Kent Records, A General Release, ordered to be recorded made from William Buorn of St. Jones's County in the Province of New York, to Nicholas Greenberry. Kent Records No. 14. Fol. 23.

Aug. 15.

From Kent Records, a Letter of Attorney, ordered to be recorded, from John Beaman and Nicholas Greenberry, both of Maryland, unto Captain John Briggs of St. Jones's County, in the Province of New York, to demand and recover a Bond Debt due from William Buorn, of the County of St. Jones, in the Province of New York. Kent Records, No. 14. Fol. 24.

Aug. 21.

An Original Indenture of Release, under the Hand and Seal of the Duke of York, being made between the said Duke of York, of the one Part, and William Penn Esq; Son and Heir of Sir William Penn Knight, deceased, of the other Part. It recites, that the Duke, being willing and desirous, that the Tract, or Part of Land called Pensilvania, therein after mentioned, should be granted and assured unto the said William Penn, and his Heirs, and, for that Purpose, having signified and declared his Assent thereunto, to the Right Honourable the Lords of Committee of Plantations; His Majesty, by his Letters Patent under the Great Seal, bearing Date the 4th of March, in the 33d Year of his Reign, had granted unto the said William Penn, and his Heirs, all that Tract, or Part of Land in America, with the Islands, therein contained, and thereunto belonging, as the same is bounded and described in, and by the said Patent, and therein called Pensilvania, together with several Royalties, Franchises, Jurisdictions and Privileges therein contained. It further recites, that, in Consideration of 5s. and for the Considerations therein after mentioned, the said Duke was willing and pleased to confirm, and make any

further Assurances of the said Tract of Land and Premises, unto the said William Penn, and his Heirs. Now, his said Royal Highness, out of a special regard to the Memory, and many faithful and eminent Services, heretofore performed by the said Sir William Penn to his Majesty, and his Royal Highness, and for the better encouraging the said William Penn to proceed in the cultivating and improving the said Tract of Ground and Islands therein, and there unto belonging, and reducing the savage and barbarous Natives thereof to Civility, and for the Good-will which is said Royal Highness hath, and beareth unto the said William Penn, and for other good Causes and Considerations, doth, for him and his Heirs, remise, release, and for ever quit Claim, unto the said William Penn, (in his peaceable Possession now being) his Heirs and Assigns, all the Estate, Right, Title, Interest, Rents, Services, Duties, Payments, Property, Claim and Demand whatsoever, of his said Royal Highness, of, into, or out of the said Tract of Land, and all and singular other the Lands, Islands, Tenements, Hereditaments, and other things comprised in the said Letters Patent, and within the Bounds and Limits therein mentioned; to hold to the said William Penn, and His Heirs, to the only Use and Benefit of the said William Penn, his Heirs and Assigns forever. The original Indenture under the Duke's Seal, (above 60 Years old,) witnessed by Jo. Werden and Geo. Mann.

Aug. 24.

Another original Indenture of Feoffment, under the Hand and Seal of the Duke of York, between the Duke of the one Part, and the said William Penn of the other Part, whereby (without any Recitals) the said Duke, out of a special Regard to the Memory, and many faithful and eminent Services then-tofore performed by Sir William Penn to his Majesty and the Duke, and for the Good-will which the Duke had and bore to the said William Penn, and in consideration of 10s. and for other good Causes and Considerations, did bargain, sell, enfeoff and confirm, unto the said William Penn, his Heirs and Assigns for ever.

All that the Town of Newcastle, otherwise called Delaware, and all that Tract of Land, lying within the Compass or Circle of 12 Miles about the same, scituate, lying, and being upon the River Delaware, in America, and all Islands in the said River Delaware, and the said River and soil thereof, lying North of the Southermost Part of the said Circle of 12 Miles about the said Town.

Together with all Rents, Services, Royalties, Franchises,

Duties, Jurisdictions, Liberties and Privileges, thereunto belonging, and all the Estate, Right, Title, Interest, Powers, Property, Claim and Demand whatsoever, of the Duke, of, in, or to the same, or to any Part or Parcel thereof.

Saving always to the Duke, his Agent and Servants, free Use of all Ports, Ways and Passages, into, through, and out of the bargained Premises, and every Part and Parcel thereof.

To have and to hold the said Town and Circle of 12 Miles of Land about the same, Islands and Premises, with their Appurtenances, unto the said William Penn, his Heirs and Assigns, to the only Use and Behoof of the said William Penn, his Heirs and Assigns, for ever,

Yielding, and paying yearly unto the Duke, his Heirs and Assigns, the Sum of 5s. at the Feast of St. Michael only.

And the said William Penn, for himself, his Heirs and Assigns, covenants and grants to the Duke, to pay the said yearly Rent of 5s. at the Days whereon reserved.

And the Duke, for himself, his Heirs and Assigns, covenants and grants with the said William Penn, his Heirs and Assigns, that the Duke, his Heirs and Assigns, will, at any time hereafter during the Space of 7 Years next ensuing the Date hereof, upon the Request, and at the Costs and Charges in the Law of the said William Penn, his Heirs and Assigns, do make and execute, or cause or procure to be made, done and executed, all and every such further Act and Acts, Conveyances and Assurances in the Law, whatsoever, for the further conveying and assuring the said Town, and Circle of 12 Miles of Land about the same, and Islands, and all other the Premises, with the Appurtenances, unto the said William Penn, his Heirs and Assigns forever, as by the Council learned in the Law, of the said William Penn, his Heirs or Assigns, shall be devised, advised, or required.

And the Duke thereby made, constituted, and appointed John Moll of Newcastle aforesaid Esq; and Ephraim Herman of Newcastle aforesaid Gent. jointly, and either of them severally his Attorneys; and gives and grants unto them, or either of them, full Power and Authority for him, and in his Name and Stead, into all and singular the Premises, and into every, or any Part or Parcel thereof, in the Name of the whole, to enter and quiet and peaceable Possession and Seisin thereof, or of any Part or Parcel thereof in the Name, of the whole to enter and receive; and, after peaceable Possession thereof had and taken, as aforesaid, to deliver quiet and peaceable Possession, and Seisin thereof, or of any Part or Parcel thereof, in the Name of the whole, to the said William Penn, his Heirs or Assigns, or to his or their lawful Attorney or Attorneys, sufficiently an-

thorised to receive and take the same; and him or them to leave in the quiet and peaceable Possession thereof, according to the true Intent and Meaning of these Presents.

And the Duke allows of, ratifies and confirms, whatsoever his said Attorneys shall lawfully do, or cause to be done, in and about the Premises, by Virtue of these Presents, to be as good and effectual in the Law, to all Intents and Purposes, as if the Duke had done the same in his own Person, or had been present at the doing thereof.

Signed and sealed by the Duke of York, and witnessed by Jo. Werden and Geo. Mann.

This original Indenture is markt to be inrolled in sundry Places, and at sundry Times, viz. in the Office of Records for the Province of New York, on 21 Nov. 1682, in the Court of Exchequer in Trinity Term 1684, (the 36th of King Charles II.) in the Office of the Auditor of the Exchequer sans Date thereto, and in the Office of the Clerk of the Pells, on 10 Oct. 1688, in the fourth of King James the Second.

As by the Original Indenture of Feoffment.

We have also a Copy thereof from the Records in New York, in New York Records, No. 1. Fol. 122.

Aug. 24.

Another Original Indenture of Feoffment, under the Hand and Seal of the Duke of York, between the Duke of the one Part, and the said William Penn of the other Part, whereby, (without any Recitals,) the said Duke, out of a special Regard to the Memory and many faithful and eminent Services then-tofore performed by the said Sir William Penn to his Majesty and his Royal Highness, and for the Good-will which the said Duke had and bore to the said William Penn, and for the Consideration of 10s. and of the Rent and Covenants herein after reserved and contained, does bargain, sell, enfeoff and confirm, unto the said William Penn, his Heirs and Assigns for ever,

All that Tract of Land, upon Delaware River and Bay, beginning 12 Miles South from the Town of Newcastle, other wise called Delaware, and extending South to the Whore-kills, otherwise called Capin Lopen, together with free and undisturbed Use and Passage into, and out of all Harbours, Bays, Waters, Rivers, Isles and Inlets, belonging to, or leading to the same; Together with the Soil, Fields, Woods, Underwoods, Mountains, Hills, Fenns, Isles, Lakes, Rivers, Rivulets, Bays and Inlets, situate in, or belonging unto the Limits and Bounds aforesaid.

Together with all Sorts of Minerals, and all the Estate, Interest, Royalties, Franchises, Powers, Privileges and Immuni-

ties whatsoever, of the Duke therein, or in or to any Part or Parcel thereof.

Saving and reserving to the Duke, his Agents and Servants, free Use of all Ports, Ways and Passages into, through, and out of the Premises.

To hold to the said William Penn, his Heirs and Assigns, to the only Use of the said William Penn, his Heirs and Assigns for ever.

To be held of his Royal Highness and his Heirs, as of their Castle of New York, in free and common Soccage,

Yielding yearly to the said Duke, his Heirs and Assigns one Rose at Michaelmas, if demanded.

And the said William Penn, for himself, his Heirs and Assigns, covenants and agrees with the Duke, his Heirs and Assigns, that he the said William Penn, his Heirs or Assigns, shall and will, within one Year next, erect a publick Office of Registry upon the Premises, wherein he or they shall and will, amongst other Things, truly account, set down, and register, all Rents and other Profits, which he or they shall make, raise, get, or procure, of, in, or out of the said Premises, and shall, at Michaelmas, yearly, pay and deliver to the Duke, his Heirs and Assigns, a Moyety of all Rents, Issues and Profits, as well extraordinary as ordinary, as shall be made or raised by reason of the Premises.

And, if the same shall be behind by the Space of 20 Days after the same ought to be paid, then, and so often, it shall be lawful for the Duke, his Heirs and Assigns, to enter into, and upon the said Premises, and there to distrain, and the Distresses to take and detain, until the said Moyety and Arrears thereof shall be paid, together with all Costs and Damages for the same.

The follow the Duke's Covenants for further Assurance, and his Appointment of Attorneys to deliver Seisin, in the very same Words as in the last Feoffment which was made of Newcastle.

Signed and sealed by the Duke, and witnessed by Jo. Werden and Geo. Mann. This original Indenture is markt to be recorded in the Office of Records for the Province of New York, on 21 Nov. 1682.

As by this original Indenture of Feoffment also.

We have likewise a Copy thereof from the Records in New York, in New York Records, No. 1. Fol. 124.

1682, Oct. 10.

From the Records in Kent County, the Entry of a Bond from Geo. Cullin, of the County of St. Jones's in the Province of

New York, to Geo. Martin of the same County and Province, conditioned for making over to the said Martin, within a Year, in open Court for the County of St. Jones's, 500 Acres of Land on the South Side of Mispillion Creek. Kent Records, No. 14. Fol. 25.

Note.

You are pleased to observe the Feoffments from the Duke were dated (here) but 24 Aug. 1682, and some Time it must have taken for Mr. Penn to prepare and go over with them.

Oct. 27. 28.

An Entry taken from the Newcastle Records in the following Words; "On the 27th Day of October, 1682, arrived before the "Town of Newcastle in Delaware, from England, William "Penn Esq; Proprietor of Pensilvania, who produced two "certain Deeds of Feoffment, from the illustrious Prince James, "Duke of York and Albany, &c., for this Town of Newcastle, "and 12 Miles about it, and also for the two lower Counties, "the Whorekills and St. Jones's which said Deeds bore Date "24th August 1682, and, pursuant to the true Intent, Purpose, "and Meaning of his Royal Highness in the same Deeds, he "the said William Penn received Possession of the Town of "Newcastle, the 28th of October, 1682. Newcastle Records, No. "11. Fol. 92."

Oct. 28.

Another Entry, taken from the Newcastle Records, viz. "New- "castle, the 28th October, 1682. Memorandum, That the Day "and Year first above written, William Penn Esq; by Virtue "of an Instrument of Indenture, signed and sealed by his Royal "Highness James Duke of York, &c. did, then and there, de- "mand Possession and Seisin, of John Moll Esq; and Ephraim "Herman Gent. (Attorneys constituted by his said Royal High- "ness) of the Town of Newcastle, otherwise called Delaware, "with 12 Miles Circle or Compass of the said Town; That the "Possession and Seisin was accordingly given, by the said At- "torneys, to the said William Penn, according to the usual "Form, by Delivery of the Fort of the said Town, and leaving "the said William Penn in quiet and peaceable Possession "thereof, and also, by the Delivery of Turf and Twig, and "Water and Soil of the River Delaware; and that the said Wil- "liam Penn remained in the peaceable Possession of the Pre- "mises, as Witness our Hands the Day abovesaid. Thomas "Holme, William Markham, Arnoldus de la Grange, Geo. "Ferman, Ja. Graham, Samuel Land, Richard Tugelo, Joseph "Curtis, John Smith." Newcastle Records, No. 11. Fol. 93.

Note.

We have, in this present Cause, (58 Years after this Transaction) examined old Witnesses, who were present at Mr. Penn's taking Possession, and at the Delivery of Seisin to him.

Oct. 28.

Another Entry from the Newcastle Records, viz. "We under written, being Inhabitants of the Town of Newcastle upon Delaware River, having heard the Indentures read, made between his Royal Highness James Duke of York and Albany, &c. and William Penn Esq; Governor and Proprietor of the Province of Pensilvania, &c. wherein the said Duke transferreth his Right and Title to Newcastle, and 12 Miles Circle about the same, with all Powers, and Jurisdictions, and Services thereunto belonging, &c. unto the said William Penn; and having seen, by the said Duke's Appointed Attorneys, John Moll and Ephraim Herman, both of Newcastle, Possession given, and by our Governor, William Penn Esq; Possession taken, whereby we are made subjects, under the King, to the said William Penn Esq; we do hereby, in the Presence of God, solemnly promise to yield to him all just Obedience, and to live quietly and peaceably under his Government. Witness our hands this 28th Day of October, Anno 1682. Arnoldus de la Grange, Joh. D'haes, R. D. Burch, Will. Sempill, John Homez, Hendrick Lemmens, Joseph Moore, Jean Bavins, Jonas Arskin, Gyles Barret, Peter Clason, Samuel Land." Newcastle Records, No. 11. Fol. 93.

We have a written Map or Plans of the Town of Newcastle, apparently very ancient; It appears to have been writ by some Foreigner, and Mr. Hamilton gives some Account of its having been of the Hand Writing of this Arnoldus de la Grange, before named, and of its having been found, by a dead Surveyor of Newcastle County, long ago, in the Surveyor General's Office in Newcastle. The Date is most uncertain, but it shews that the Town anciently was laid out regularly in Streets, and many of the Town Lots then taken up, at the Time of this Map; and indeed, it is observable, on many of the Grants of Town Lots in Newcastle, herein before stated, that those Lots are said to be lying in such and such Streets, as we find mentioned in this old Map. The Exhibit is Newcastle Map.

Oct. 29.

From the Records in Sussex County. The Entry of a Notification, signed William Penn, dated at Upland, and directed to William Clarke, Luke Watson, John Roads, John Avery, Halmanus Wiltbank, and Alexander Molistone; he notifies to

them, that the Duke of York had, by Feoffment, dated 24 Aug. 1682, past and conveyed to him, from 12 Miles Southward of Newcastle upon Delaware River, to Cape Henlopen, together with the Powers and Jurisdictions thereunto belonging, reserving unto himself one Moyety of the Rent thereof, whereby the said William Penn becomes, also, Proprietary and Governor of the before-mentioned Tract of Land; He desires them to meet him, next Thursday, at the Town of Newcastle, being the 2d of November. where he intends to hold a General Court for the settling the Jurisdiction of these, and your Parts, in which they will oblige him. If there be any Persons of Note, or others, that desire to be present, they may come freely, which you are desired to communicate. Sussex Records, No. 17. Fol. 16.

Nov. 7.

From the Records in Sussex County, Commission from William Penn Esq; dated in Newcastle, whereby he, as Proprietary, and Governor of Pensilvania, Newcastle, St. Jones, Whorekill alias New Deal, with their proper Liberties, does, in the King's Name, constitute Luke Watson, William Clark, John Roads, John Avery, and Halmanus Wiltbank, or any three of them, to be Justices of the Peace, and Court of Judicature for the County of Whorekill alias New Deal; this Commission to be in Force for one Year, or till further Order. Sussex Records, No. 17. Fol. 17.

Same Day.

From the Records in Kent County, another like Commission from the said William Penn, under the like Titles, and dated at Newcastle, appointing Frank Whitwell, William Durvall, John Hillyard, John Briggs, and Robert Hart, or any three of them, to be Justices of the Peace, and Court of Judicature for the County of St. Jones, and an Act of Entry, that it was published in Court, and ordered to be recorded. Kent Records, No. 14. Fol. 26.

Nov. 8.

From the Records in Kent County, A Writ, under Mr. Penn's Hand and Seal, directed to Peter Baucomb, High Sheriff of St. Jones's County, requiring him to summon all the Freeholders, within the Precinct of his Office, to meet on the 20th Instant, and to elect and chuse, out of themselves, seven Person, of most Note for Wisdom, Sobriety and Integrity, to serve as their Deputies and Representatives, in General Assembly, to be held at Upland, in the Province of Pensilvania, the 6th of December next, and then and there to consult with him, for the common Good of the Inhabitants of that Province, and the adjacent

Counties of Newcastle, St. Jones's, Whorekill alias New Deal, under his Charge and Jurisdiction, and to make a true and just Return to Mr. Penn. Kent Records, No. 14. Fol. 26.

Same Day.

From the Records in Sussex County, A Commission from Mr. Penn, appointing John Vynes to be Sheriff of the County of Whorekill alias New Deal. Sussex Records, No. 17. Fol. 18.

Same Day.

Also Mr. Penn's like Writ, to him directed, to summon all the Freeholders of that County, to elect seven Persons as their Representatives, for the General Assembly. Sussex Records No. 17. Fol. 18.

Nov. 14.

From the Sussex Records, an Entry of a Paper signed and sealed by several of the Justices by Mr. Penn appointed for that County, whereby, in pursuance of their Commission, they do, in the Presence of God, declare and promise to act justly, and faithfully discharge their Trust. Sussex Records, No. 17. Fol. 19.

Nov. 20.

From the Records in Kent County. Peter Bawcomb signs and seals, before the open Court, that he being appointed Sheriff of the County of St. Jones's, by Mr. Penn, he declares, and solemnly promises, in the Presence of God, justly to execute his Office, and discharge his Trust. Kent Records, No. 14. Fol. 27.

Same Day.

From the Records in Kent County, five of the Justices for St. Jones's County being appointed by Mr. Penn, sign and seal the like solemn Declaration, on their Parts. Kent Records, No. 14. Fol. 27.

Nov. 21.

From the New York Records, it appears that the two Feoffments from the Duke of York to Mr. Penn, were on this Day, entered in their Records. New York Records, No. 1. Fol. 123, and Fol. 126.

Same Day.

From the New York Records, A Declaration, by the Commander in Chief and Council, dated in New York, recites both the Duke's said Feoffments to Mr. Penn, and the Duke's Appointments, therein contained, of Persons to deliver Possession of the said Premises to Mr. Penn, as by the said Indentures, here produced and shewn to us, and by us well approved of

and entered in the publick Records of this Province, does appear. And we, being thereby fully satisfied of the said William Penn's Right to the Possession and Enjoyment of the Premises, have, therefore, thought fit and necessary to signify and declare the same to you, to prevent any Doubt or Trouble that might arise or accrue, and to give you our Thanks for your good Services, done in your several Offices and Stations, during the Time that you remained under his Royal Highness's Government; expecting no further Account, than that you readily submit and yield all due Obedience and Conformity to the Powers granted to the said William Penn in and by the said Indentures; in the Performance and Enjoyment of which we wish you all Happiness. This Declaration is directed, To the several Justices of the Peace, Magistrates, and other Officers, at Newcastle, St. Jones, Deal, alias the Whorekill, at Delaware, or, within any of the Bounds and Limits above-mentioned. New York Records, No. 1. Fol. 127.

We have another Entry of this Declaration, which is there signed by the Commander Anthony Brockholls, and countersigned, by Order in Council, John West Clerk of the Council; which is entered in Newcastle Records, No. 11. Fol. 92.

From the Newcastle Records, we have an Entry of a Certificate, or Declaration, signed John Moll, (but without Date) wherein he relates that Mr. Penn, at his first Arrival from England by the Town of Newcastle, in the Month of October 1682, sent a Messenger ashore, to give Notice to the Commissioners of his Desire to speak with them aboard; that Mr. Moll (being then left the first in Commission by Sir Edmund Andros, Governor under the Duke of York of all his Territories in America) did go aboard, with some more of the Commissioners; when Mr. Penn shew'd him the two Feoffments, the one for the County of Newcastle, with 12 Miles Distance North and South thereunto belonging [please to observe Mr. Moll's understanding of the Terms of that Feoffment] The other for, &c. with Powers of Attorney to me, and Ephraim Herman deceased, to deliver Possession to Mr. Penn: but the said Herman, being gone from home, was not aboard, at that Time; I therefore, desired, from Mr. Penn, 24 Hours to consider with Herman and the rest of the Commissioners about it; In which Time we unanimously agreed to comply with the Duke's Orders, Whereupon, by Virtue of the Powers given to us by the said Letters of Attorney, we did give and surrender, in the Duke's Name, to Mr. Penn, actual and peaceable Possession of the Fort at Newcastle, by giving him the Key thereof to lock upon himself alone the Door: which being open'd by him again, we did deliver, also, to him, one Turf, with a Twig upon it, a Por-

ringer with River Water and Soil, in Part of all that was specified in the said Indenture, and according to the true Intent and Meaning thereof; And, a few Days after that, we went to the House of Captain Edmund Cantwell, at the south Side of Apocumining Creek, by Computation, above 12 Miles Distance from the Town of Newcastle, as being Part of the Two lower Counties mentioned in the Duke's other Feoffment; and, after we had shewn to the Commissioners of those Counties, the Power and Orders given to us as aforesaid, we askt them if they could shew any Cause why we should not proceed to act and do there, as we had done at Newcastle? And, finding no manner of Obstruction, we made, then and there, in the Duke's Name, the same Manner and Form of Delivery, as we had done at Newcastle; Which acting of us, was fully accepted and well approved of, by Anthony Brockholl, then Commander in chief, and his Council, at New York, as appears by their Declaration dated 21 November 1682. From which Jurisdiction we had our Dependance, all along, ever since the Conquest, until we had made the above related Delivery to Mr. Penn, by Virtue of the Duke's Orders and Commands. Newcastle Records, No. 11. Fol. 94.

Nor. 21.

From the Sussex Records, the Return made by John Vines Sheriff, to Mr. Penn, that, in obedience to his Warrant of the 8th Instant, he did summon all the Freeholders, and that they, with a general Vote, did elect and choose Edward Southrin, William Clark, Alexander Draper, John Roades, Luke Watson, Nanthaniel Walker, and Cornelius Verhoof. Sussex Records, No. 17. Fol. 19.

Dec. 6.

An original Paper, or Petition, signed by those particular seven Persons for New Deal alias Whorekill, by six more for St. Jones, and by five more for Newcastle, directed to the Honourable Proprietor and Governor of Pensilvania, intituled, The humble Request of the Freeholders of the Three Countys of Newcastle, Jones, and New Deal alias Whorekill, humbly desiring that they may be favoured with an Act of Union, by the Governor and Assembly, for their Incorporation in and with the Province of Pensilvania, in order to their Enjoyment of all the Rights and Privileges of the aforesaid Province; and that they might, for ever after, be esteemed and accounted as Freemen of the before-named Province; This being our Desires and humble Request in the Assembly, we have desired the President and two other Members of the Upper Counties, Part of this Province, to present it to your Honour; and if we are so happy

to obtain our Request, we will, for ever, acknowledge it, and in all Faithfulness subscribe ourselves your in all lawful Obedience. This Original Paper is proved by Patrick Baird, and is Pensilvania Exhibit D D.

1682, *Dec.* 6.

From the Records of Pensilvania—An Act of Assembly with this Title, The Laws of Pensilvania and Territories thereunto belonging, made by the Governor and Freemen of the Province, in a General Assembly held at Chester alias Upland, the 6th of December 1682. An Act of Union for annexing and uniting of the Counties of Newcastle, Jones's, and the Whorekills alias New Deal, to the Province of Pensilvania. It recites the Letters Patent for Pensilvania, granted by King Charles to Mr. Penn, and that the Duke of York had released his Right and Claim to every Part of that Province to Mr. Penn, whereby he was become the undoubted and rightful Proprietary and Governor of that Province, and was thereby so recognized and acknowledged. It also recites that, as a beneficial and requisite Addition to the said Territory, it had pleased the Duke of York to grant to Mr. Penn all that Tract from 12 Miles Northward of Newcastle on the River Delaware, down to the South Cape commonly called Cape Henlopen, and by the Proprietary and Governor now called Cape James, lying on the West side of the said River and Bay, formerly possess'd by the Dutch, and bought by them of the Natives, and first surrendered up, on Articles of Peace, to the Lieutenant-Governor Colonel Nicholls, and a second time, to Sir Edmund Andros, Lieutenant-Governor to the said Duke, and had been by him quietly possess'd and enjoyed; and also the said River of Delaware, and Soil thereof, and all Islands therein, lately cast into three Counties, called Newcastle, Jones's and Whorekill alias New Deal, together with all Royalties, Powers and Jurisdictions thereunto belonging, as by two Deeds of Feoffment, dated 24th August 1682, may appear. And for that, there must always be a People, before there can be a Government, and that People must be united and free, in order to settle and encourage them for the Prosperity of the Government; and since the Inhabitants of that Tract, lately passed from the Duke, are not yet under the same Capacity with those in Pensilvania; and, reciting the said Request of the Freemen of the said County, and as the Union of two distinct People, that are under one Government, is most desirable in itself, and beneficial to the Publick, and that it cannot be so durably maintained, to the mutual benefit of each other, as by making them equally Sharers in Benefits and Privileges. It is enacted by the Proprietary and Governor, by

and with the Advice and Consent of the Deputies of the Freemen of the said Province and Counties, in Assembly met, that the Counties of Newcastle, Jones's, and Whorekill alias New Dale, shall be, and are, annexed unto the Province of Pensilvania, as of the proper Territory thereof; and the People therein shall be governed by the same Laws, and enjoy the same Privileges, in all Respects, as the Inhabitants of Pensilvania do or shall enjoy from time to time therein. This is proved by Charles Brockden Deputy-Master of the Rolls, to be a true Copy, and is in Pensilvania Records, No. 7. Fol. 2.

Dec. 18.

From the New York Records, the Entry of a Letter from Captain Brockholls to Sir John Werden. Sir, I received your's of the twenty fourth of August past the 4th of December: but, too late to assist or serve Mr. Penn in giving Possession of what his Royal Highness has been pleased to grant him; being before possess thereof by the Persons impowered in the Body of the Deeds, which Mr. Penn, having since been here, hath shewn and recorded. Am ready to obey all his Royal Highness's Commands, and serve his Interest, but fear what left of his Province not able to defray the Charge. I am, &c. New York Records, No. 11. Fol. 126.

Dec. 21.

From Kent County Records, Proprietary Penn's Commission, or Authority, under his Hand and Seal, dated at Chester, and directed to the Justices of the Peace for the County of Kent; wherein he orders and appoints them, in open Court to receive all Petitions from Persons wanting to take up Land amongst them, to grant Warrants to the Surveyor to measure the same, not to exceed 300 Acres to a Master of a Family, nor 100 to a single Person at one single Penny per Acre, or Value thereof in the Produce of the County; which done the Surveyor to make his Return to the Court, and the Court make their Return into my Secretary's Office: all Lands formerly granted, and not taken up and settled within the Time limited by the Methods of your own Court, shall be accounted vacant Land; all Persons, for the future, that shall have Grants, shall be limited to seat in a Year, else the Grants to be void; Endeavour to seat the Lands by way, of Townships, as 3,000 Acres amongst 10 Families; if single Persons 1,000 among 10 of them, laid out in a long Square, 5 or 10 of a side, and a Way, of 200 Feet broad, left between them, for a Highway in the Township, for the future Good and great Benefit of the County. Newcastle Records, No. 11. Fol. 28.

Dec. 25.

From Kent County Records, Proprietary Penn's Commission, under his Hand and Seal, dated at Chester, in the second Year of his Government, appointing seven Persons to be Justices of the Peace in the Jurisdiction of the County of Jones's, which my Will and Pleasure is shall, from henceforth, be called by the Name of Kent; the Extent whereof shall be from the South-side of the most Northerly main Branch of Duck-Creek Northwards, and Southward to the North-side of the main Branch of Mispillion Creek called the Three Runs; and they, or any four of them, to be a Court of Judicature; This Commission to be of Force for one Year, or till further Order. Newcastle Records, No. 11. Fol. 29.

Same Day.

Governor Penn's Letter to those Justices, exhorting them most pathetically, to do Justice by virtue of their Commission, and also telling 'em that he thinks fit that an exact Catalogue be returned to him, of the Names of all the People of their County, Masters, Mistresses, Servants, Parents, Children, also the Number of Acres each Freeholder has, and by whom, and when, granted, &c. Newcastle Records, No. 11. Fol. 30.

Same Day.

Proprietary Penn's Commission under his Hand and Seal dated at Chester, in the 2d Year of his Government, in like manner appointing seven Persons, viz. William Darvall, Luke Watson, Norton Claypole, John Roades, Edward Southrin. Robert Hart, and John Kyphaven, to be Justices of the Peace in the Jurisdiction of the County of the Whorekills, which he wills, from henceforth, shall be called by the Name of Sussex; the Extent whereof shall be from the main Branch of Mispillion Creek, called the Three Runs, Northwards, and Southwards to Assawament Inlett, reputed and accounted Cape Henlopen, which said Cape Henlopen, I will, from henceforward, have called by the Name of Cape James; And you or any four of you to be a Court of Judicature. This Commission to be in Force for a Year or till further Order. Sussex Records, No. 17. Fol. 20.

Note well.

Mr. Penn had not been two Months in the Country, and he scarce foresaw the present Dispute, yet, then, nay three Weeks before, in the Act of Union, he called Cape Henlopen, just where the ancient Maps called it, and where Lord Baltimore's map, and our Map, (used 50 Years afterwards in 1731, and 1732) called it.

Same Day.

Another Entry of Proprietary Penn's Letter, sent to the Justices of Sussex County in *totidem verbis* as the former. Sussex Records, No. 17. Fol. 21.

Same Day.

Another Entry of Proprietary Penn's Orders and Limitations about taking up Land in *totidem verbis*, as, the former sent to Kent County. Sussex Records, No. 17. Fol. 22.

Same Day.

Another Commission from Proprietary Penn, constituting William Clark to be Clerk of the Court of Sessions for the County of Sussex, and Register of the said County. Sussex Records, No. 17. Fol. 23.

Dec. 26.

From the Sussex Records, an Order, under Proprietary Penn's Hand and Seal, to the Justices of the Peace of the County of Sussex, that, before any Land be surveyed, for any other Person, they issue a Warrant, to the Surveyor, to lay out, for the Duke of York, in their County or Precincts, 10,000 Acres of Land for a Manor, and 10,000 Acres for a Manor for Governor Penn; and he would have the Duke's Manor lie on the North side of Assawarmet Inlett, as near to Cape James as may be, and his own Manor to be between the Bounds of Cedar-Creek and Mispillion-Creek, or in the most convenient Place towards the North side of the County. Sussex Records, No. 17. Fol. 23.

Dec. 26.

From the Kent Records, another like Order under Proprietary Penn's Hand and Seal, to issue a Warrant to the Surveyor to lay out in their County or Precincts, 10,000 Acres for a Manor for the Duke of York, and 10,000 Acres for a Manor for himself, in the best Places for sound and good Land and Water. Kent Records, No. 14. Fol. 31.

Jan. 9.

From the Sussex Records, an Entry of a Declaration, signed and sealed by the Justices which had been appointed by Proprietary Penn, whereby they acknowledge him to be their rightful Proprietor, and make a solemn Promise to discharge their Commission faithfully, and if they should do otherwise, then to suffer and undergo the same Fine or Punishment as if they had taken an Oath. Sussex Records, No. 17. Fol. 20.

Jan. 16.

At a Court held for the County of Kent under Proprietary Penn, the Court orders the Clerk to give out a Warrant, di-

rected to the Surveyor, to lay out 10,000 Acres of Land for the Duke of York, on the Rich Rigge, in the Road to Choplanct, and to the Heads of the Branches of the Murther-Creek or where they will in any other clear Land; it being for a Manor for the Duke of York, granted by a special Order from the Proprietary and Court for the same. And they make another like Order, for a Warrant to lay out 10,000 Acres for Proprietary Penn. at the South-side of the main Branch of Duck-Creek, and so towards Jones's Creek. Kent Records No. 14, Fol. 31.

Same Day.

All the Justices of Kent County, sign and seal a like Declaration of Acknowledgment of Mr. Penn's being their Proprietary, and a solemn Promise faithfully to execute his Commission, under Pain of the same Fine and Punishment as if they had taken an Oath. Kent Records, No. 14. Fol. 32.

Feb. 13.

A Deed recorded in Sussex County whereby Luke Watson of Sussex County, in consideration of 30*l*. Sterling, conveys to Samuel Gray also of Sussex County formerly called the Whorekill, a Parcel of Land of 196 Acres called St. Giles's on the West-side of Delaware Bay, West from the Whorekills about a Mile from Pagan-Creek, which Piece of Land had been heretofore granted on 24th June 1676, by the Duke of York by his Grant under the Great Seal of New York, used for granting of Land; free of all Incumbrances, the Rent and Services reserved to the Duke of York and his Assigns only excepted. Sussex Records. No. 17. Fol. 24.

Feb. 21.

An Original Assignment, made by way of Endorsement upon the Indian Purchase which was made the 10th of July 1680, whereby that Purchaser, John Moll, assigns all his Right, Title and Interest to the therewithin mentioned, unto Proprietary Penn; Moll's own Plantation of 200 and odd Acres of Land in White-Clay Creek only excepted. This is proved by Patrick Baird and is the Pensilvania Exhibit. F F.

35^o *Car. II.* 1682.

From the Chappel of the Rolls, a Copy of Letters Patent granted to James Duke of York his Heirs and Assigns (without any Recital) of.

Mar. 22.

All that the Town of Newcastle, otherwise called Delaware, and Fort therein or thereunto belonging, situate, lying and being between Maryland and New Jersey in America; and all

that Tract of Land, lying within the Compass or Circle of 12 Miles about the said Town, situate, lying and being upon the River of Delaware; and all Islands in the said River of Delaware; and the said River and Soil thereof, lying North of the Southermost Part of the said Circle of 12 Miles about the said Town; and all that Tract of Land, upon Delaware River and Bay, beginning 12 Miles South from the said Town of Newcastle otherwise called Delaware, and extending South to Cape Lopin; together with all the Lands, Islands, Soil, Rivers, Harbours, Mines, Minerals, Quarries, Woods, Marshes, Waters, Lakes, Fishings, Hawkings, Huntings, Fowlings, and all other Royalties, Privileges, Profits, Commodities and Hereditaments to the said Town, Fort, Tracts of Land, Islands and Premises, or to any or either of them, belonging or appertaining, with their and every of their Appurtenances, scituate, lying and being in America.

And all the King's Estate, Right, Title, Interest, Benefit, Advantage, Claim and Demand whatsoever of in or to the said Town, Fort, Lands or Premises, or any Part or Parcel thereof; and the Reversion and Reversions, Remainder and Remainders thereof; together with the yearly and all other Rents, Revenues and Profits of the Premises, and of every Part and Parcel thereof.

To hold to the said Duke of York his Heirs and Assigns forever, to be held of the King his Heirs and Successors, as of the Manor of East Greenwich in free and common Socage, and not in Capite or by Knight's-Service.

Yielding and rendering, and the Duke of York for himself his Heirs and Assigns covenants and promises to yield and render, to his Majesty his Heirs and Assigns, yearly, four Beaver Skins, when demanded.

And the Crown thereby grants to the Duke of York, his Heirs and Assigns, Power to govern, punish, make Laws, &c. (and reserves appeals to the Crown) and to appoint and revoke Governors, Officers, Ministers, &c. This Copy is proved from the Rolls by Paris, and is Rocha No. 6.

Note.

The Defendant cannot bring himself in his Answer to believe that ever these lower Counties were expressly granted by the Crown to the Duke of York, but it is plain from the above that they were. But then he says, that this Grant was made to the Duke after his Feoffments were executed to Mr. Penn, and it is certain that it was, almost, not quite, seven Months after the Date of the Duke's Feoffments to Mr. Penn; and the Defendant supposes that the Duke obtained this Grant

for himself, and not for Mr. Penn, and never made any subsequent Conveyance to Mr. Penn after this Patent: But that is not to be suppos'd, nor can legally be suppos'd; the legal and the fair Presumption is, that the Duke, who, not 7 Months before, had covenanted to procure further Assurance, did obtain this new express Grant of the 3 lower Counties in Performance of his Covenants, and for the Benefit of Mr. Penn; and, as this new Grant must either have been intended for the Benefit of the Duke himself, (as the Defendant insists) or of Mr. Penn, (as we insist) we have a Fact that will determine that Question:

33^d *Car. II.* 1682, *Mar.* 22.

For, we have the very Original Charter itself, under the Great Seal, in our Custody, ready to produce, which, if the Duke had intended for himself, and to defeat our Title by, he would have kept, and not Mr. Penn, who was, at this Time of passing it, and for a considerable Time longer, over in America.

As to Mr. Penn's obtaining further Assurance from the Duke, after this express Grant to the Duke, within the 7 Years, the Duke, soon after Mr. Penn's Return to England, became King, and afterwards abdicated, before the 7 Years expired. Besides, as will be observed by and by, the particuilar Bounds of the lower Counties were not settled, much less the Lines, to divide them from Maryland, run.

And, had the Duke of York continued a Subject, Mr. Penn might have compelled him to have made further Assurance which being the Case The Crown, (which was never advised to take Advantage of defective Titles in America if Possession and Improvement had followed) will never, we trust, be advised to it, in this Case, after near 80 Years Possession, and such an Improvement, and fine Colony as this settled, by one private Gentlemen, to the Ruin of his own private Fortune and Family, and without a Shilling Expence (in any Shape whatever) ever contributed by the Crown, or the Publick; by which Improvement, and the great Privileges Mr. Penn granted to the Settlers, he has, in Effect, purchased to the King, many Thousands of new Subjects, being Foreigners, who have fled from Tyranny and Oppression in their own native Countries, thither for an Asylum and Place of Refuge. And this Colony is now so finely settled, that it is not 2 Years ago since they furnisht the King with 895 Men, for the Expedition against the Spanish West Indies; a far greater Number than was furnisht by any other Colony in America. This is, doubtless, not in the present Cause, but is a Digression from it, however hope this short Digression may be excused, on so great a Part of the Plaintiff's Case.

And thus have we travelled thro' this very long 5th Chapter, from the new Charter granted to the Duke of York in 1674 down to the Time of Mr. Penn's being in full Possession of Pensilvania and the lower Counties, in 1682.

CHAP. VI. *An Account of what past (in America) in the Years 1683, 1684, and 1685, (exclusive of what past in England during those Years.)*

1683. Apr. 23.

From the Records in Kent County at a Court held for the County of Kent by Commission from William Penn, Proprietary and Governor of Pensilvania and Territories thereunto belonging, Captain William Markham Deputy Governor, present the Commissioners. The Proprietary made his Speech to the People and afterwards, the Deeds of these lower Parts was read, before the People, in open Court; then the Laws of the Government read, in open Court. Kent Records No. 14. Fol. 33.

July 26.

From the Original Returns in the Surveyor General's Office in Pensilvania, a Return, signed by J. Barkstead by Order of William Clark, that, by Virtue of a Warrant from William Penn, Proprietary and Governor of the Province of Pensilvania, and the Territories thereunto belonging, bearing Date the 4th Day of May last to him directed, by William Clark, Chief Surveyor of the Counties of Sussex and Kent, Layd out, for James Duke of York, a Tract of Land, lying and being on the North Side of Assawomenett River and Inlett, in the Territories of the Province of Pensilvania, in the County of Sussex, beginning at a Corner markt White Oak, standing in a Hommack, near the Mouth of the Inlett of Assawomenett, and running, from thence, up the River, bounded therewith, on several Courses, 1620 Perches, &c. Layd out for 10,000 Acres of Land. Surveyed the 26th of July 1683, by me J. Barkstead by Order of William Clark. This is proved to be a Copy by Benjamin Eastburn Esq; Surveyor General, and is in the Exhibits from the Surveyor General's Office, No. 8. Fol. 1.

Note.

Proprietor Penn had ordered the laying out this Tract for the Duke in this very Place, so long ago as 26 December 1682, as has appeared in his Order to the Justices of Sussex County of that Date. And this very Spot comes to the Cape Henlopen which we insist on, and is very material to be observed.

Sept. 17.

An old worn out Copy of a Commission supposed to have

been signed and sealed by Lord Baltimore, wherein the said Lord Baltimore took the Title of Proprietor of Maryland, and directed that Commission to his dear Cousin and Councillor Geo. Talbot Esq; and appointed the said Talbot to repair, forthwith, to the Skoolkill at Delaware, and in Lord Baltimore's Name to demand of William Penn Esq; or his Deputy, all that Part of Land, on the West Side of the said River, that lyeth to the Southward of the 40th Degree Northerly Latitude, according to an East Line run out, from two Observations, the one taken on 10 June 1682, and the other the 27th of September 1682, in Obedience to his Majesty's Commands, exprest in a Letter of the 2d of April 1681; which Commands were, at that time, rejected by the Agents of the said Penn, notwithstanding that (by several Letters and Writings under their Hand it may appear) they promist a Compliance with his Majesty's Commands aforesaid; and, for what you shall do herein, this shall be to you a sufficient Power. Pensilvania Exhibit B. B. spoke to by Patrick Baird.

Sept. 24.

Upon the same Paper, an old worn out Copy of a Demand, supposed to be signed and sealed by Geo. Talbot, wherein He, by Virtue of his Lordship's Commission, whereof he said that, which was there above written, was a true Copy. He the said Talbot did, in the Name of Lord Baltimore, demand, of Nicholas Moore, Deputy to William Penn Esq; all the Land, lying on the West Side of Delaware River, and to the Southward of the 40th Degree of Northerly Latitude, according to a Line run East, from two Observations, &c. ut supra; The Land, so claimed by me for Lord Baltimore's use, being Part of the Province of Maryland, granted to his Lordship's Father by King Charles the 1st of sacred Memory, and now wrongfully detained by the said William Penn from his Lordship; And in Witness that I make this Demand I have hereunto set my Hand and Seal. This is also spoke to by Patrick Baird, and is the Pensilvania Exhibit B. B.

Octob. 28.

From the Original Returns in the Surveyor-General's Office in Pennsylvania, another Return signed by J. Barkstead by Order of William Clark, that, by virtne of a Warrant from Proprietary Penn, dated the—of May last to him directed by William Clark, Chief Surveyor of the Counties of Sussex and Kent, laid out for the said Proprietor Penn a Tract of Land, being on the South Side of Rehoboth Bay, in the Territories of the Province of Pensilvania, and in the County of Sussex, bounding, on one side, along the Line of the Duke of York's Manor,

containing and laid out for 4,790 Acres of Land, survey'd the 28th October 1683, by me J. Barkstead, by Order of William Clark. This is proved to be a Copy by Ben. Eastburn Esq; Surveyor-General, and is in the Exhibits from the Surveyor General's Office, No. 8. Fol. 1.

Octob. 31.

Upon the same Paper with the Copy of Lord Baltimore's Commission to Colonel Talbot, and with Colonel Talbot's Demand made by Virtue of such Commission, is an Original Paper signed by Proprietor Penn, of this Date, being his Answer to that Demand. In which Answer Proprietor Penn, First, takes notice that, a long with that Demand, Lord Baltimore should have sent some Letter or Memorial to state his Demand. Secondly he objects to the Stile and Language of the Commission. Thirdly he says that he, nor any Deputy of his, do live on the West side of Skuilkill. Fourthly he says he was absent at New York, when this Commissioner came, and never did, nor will, commissionate his Deputy to treat and conclude his Inheritance, without his particular Directions and Command. Fifthly he says that Colonel Talbot is directed in the Commission to make his Demand according to a Line, which is said to be run in Obedience to his Majesty's Commands; and the King's Letter of 2 April 1681, expressly said that the Lord Baltimore or his Agent should, together with Mr. Penn's Agent, agree the Latitude and then run the Line and bound the Provinces; which (says Mr. Penn) is not yet done; for, those Observations, and the Line run by them, are performed by Lord Baltimore and his Agents only, and therefore, not according either to the King's Commands, or to common Equity, for Mr. Penn said He knew nothing of them. Sixthly. To pretend (as the Commission does) that Mr. Penn's Commissioners refused to comply with the said Letter is hard for him to do, for Lord Baltimore would have had them agreed to have taken an Observation upon the River Delaware, whereas the King's Letter (stating Mr. Penn's Bounds as they are exprest in his Patent) begins 12 Miles above Newcastle, upon the West side of Delaware River, so to run to the three and fortieth Degree of Northern Latitude upon the said River; which makes it impossible that Lord Baltimore should come within those Limits to take an Observation, or to run a Line, in persuance of the King's Commands in the said Letter; since, taking an Observation on Delaware River, (which, say they, he exprest) is a plain Violation of it. They further say, that they never refused, but prest, taking an Observation according to the King's Letter, which was grounded on the Bounds of Mr. Penn's Patent; and when

Lord Baltimore, and Mr. Penn's Agent, had agreed to meet at Newcastle, and to proceed according to the King's Letter, its true that Mr. Penn's Agent came not, and as true, that the Reason was, that Lord Baltimore called immediately, at Chichester alias Marcus Hook, as he went to Newcastle, and forbade the Inhabitants to pay me Quit Rent, and named the Place by a new Name, before any Line was run, or any Observation agreed: which, being a declared Breach, both of the King's Commands, and of their Treaty, in the Opinion of Mr. Penn's Agent, the said Agent refused to meet next Day, about a Matter the Lord Baltimore had, in such a manner, already determined. Seventhly, But what fault soever they were in, Mr. Penn says that he is sure, that, before an Observation was agreed, or any Line was run, he came in himself, and suddenly after waiting upon the Lord Baltimore, presented him with another Letter from the King, which he was so far from complying with, that he lookt upon the King as mistaken, and set his Patent in direct Opposition, and, to this day, would never hear of complying with it. Now, in Mr. Penn's Opinion, it was not proper to ground Lord Baltimore's Proceedings, upon a former Letter, in Neglect of a later Advice and Command from his Majesty. Nor does it look very just to make the Caution or Neglect of an Agent, in the Absence of his Principal, a Reason to proceed against his Principal when present with other Instructions, without due Regard had to him or his Allegations. And Mr. Penn goes on thus, I must say, that, at Newcastle, when I prest the Lord Baltimore to set in one House with his Council, and I would set with mine in another, that we might treat by written Memorials under our Hands, to prevent Mistakes, Ill-memory, or Ill-will, he refused, alledging he was not well. I then told him I would wave the Advantage, I thought I had, by the second Letter, and proceed to meet him at the place he desired, which was at the Head of Chesapeak Bay, and there try to find the 40th Degree of Northern Latitude, provided he would first please to set me a Gentleman's Price, so much per Mile, in case I should have no Part of the Bay by Latitude, that so I might have a Back-Port to this Province; [Note By our present Agreement we have no Back-Port now into Chesapeak Bay; many Miles, above that Bay, being, by the Agreement, yielded to Lord Baltimore, in Consideration of the three lower Counties.] This I writ according, to his Desire, and sent it after him. To sell he refused, but, started An Exchange of that Part of the Bay for the Lower Counties on the Bay of Delaware: This, I presume, he know I could not do. For his Royal Highness, had the One Half, and I did not prize the thing I desired at Such a rate: Soon after this meeting I understood he had

publish'd a Proclamation, some time before, to invite People to plant those Parts in my Possession under the Duke; and that also, before any Demand had been made, or our Friendly Treaty ended, &c. There I left him, expecting his News when he came to the Head of the Bay in September, as I thought he promised me; but instead of that, An Observation is taken, a Line run, and Trees markt, without my Notice, and a Demand made thereupon, and all grounded on the King's Letter of 2 April 81. in which I find no such Direction. And as to the Demand itself, of all the Land on Delaware River to the South of the 40th Degree, He has no Warrant to run his Line to the River, neither by the King's Letters, nor his own Patent, if he peruses it well, where he will find the Bay, but no River of Delaware. The Land demanded, is not a Part of the Province of Maryland, as exprest in the Demand, for, it is of the Jurisdiction of Delaware alias Newcastle: which is, by several Acts of the Assembly of Maryland, distinguish'd and disowned from being any Part of that Province. [Those old Acts have been all in a Lump repealed in Maryland, on 15 September 1704, as by Maryland Statute Book, Fol. 44; but they have made new Acts exactly to the same Purpose, there, since, as we shall shew in their Order of Time.] The Lord Baltimore has no Land given him by Patent, but what was unplanted of any but Savage Natives; and this West Side of the River Delaware, before, and at, the passing of his Patent, was actually bought, and possess'd, by a Civil and Christian State in Amity with the Crown of England; and by the Treaty of Peace in 53, between the English and Dutch, was Part of one Article of the Treaty that the Dutch should enjoy those Territories in America, of which this was a Member: and we know Foreign Acquisitions, of that Time and Kind, continued firm, after his Majesty's Restoration; for Jamaica still remains to us, and Dunkirk itself was not rendered, but sold. But, if Lord Baltimore had a just Pretence to this River, and former Possession too, which he never had, yet, being by the Dutch taken, and by the King taken from the Dutch, it becomes the Conqueror's; a Ship taken by the Enemy, and possess'd but 24 Hours, if retaken by the Crown is Prize, and this Place was more than 24 Years in the Hands of the Dutch, not demanded of them; This made the Duke (upon the Opinion of Councill) take out fresh Patents, since the last Conquest, for his Territories in America; nor is Lord Baltimore in the Condition of an ordinary Subject, (in whose Favour something might be alledged) for he has Regalia, Principality, as his Style shews, and I conceive he is bound to keep his own Dominions, or else lose them, and if lost to a For

eigner, and taken by the Sovereign, the Sovereign has the Right another Conqueror could plead. This is the present Jus Gentium, and Law of Nations, which, in Foreign Acquests, prevaileth; and the King, accordingly, has granted it under his Great Seal to the Duke, and if there was no Truth in this, it was actually another's before; and Connecticut Colony might put in for New York, as reasonably, as Lord Baltimore can for Delaware; their Patent having that Part of the Dutch Territory within its Bounds, on the same Mistake; which is yet out of Dispute, from Lord Baltimore's own Patent, that says New England begins where he leaves, which, being at 40 Latitude, it follows, that New York, and Part of East and West Jersey and Pensilvania will fall to New England: *Libera nos, Domine!* He concludes, that the King, by Articles of Peace between him and Holland, is the allowed Owner of all that Territory once called New Nethereland, of which this is a Part: he has granted it by two Patents; and this in Controversy by one, under the Great Seal, to the Duke of York: and the Duke, out of his Regard to the Services and Losses of my deceased Father, has interested me in Part of the same; so that he is Lord, and I am Tenant: of him I hold, and to him I pay my Rent (which his Governor of New York has now sent for) and for him I improve, as well as myself; and, therefore, I must take leave to refer Lord Baltimore to the Duke, who is, doubtless, of too much Honour to keep any Man's Right, and of too great Resolution to deliver up his own; whose Example I am resolved to follow. W. Penn, Philadelphia, 31 October 1683. This Paper is spoke to by Patrick Baird, and is Pensilvania Exhibit B B.

Feb. 13.

At a Court held by Commission from William Penn, Proprietor and Governor of the Province of Pensilvania and Territories thereunto belonging, at Lewis for the County of Sussex, the Indian Assawawmack, Harmattamale, acknowledged, in open Court, the Sale of 1,000 Acres of Land to Mr. Alexander Mollistone; which Land is on the South-side of the Indian River. Sussex Records, No. 17. Fol. 26.

1684, *Mar.* 26.

From Sussex Records the Inrollment of a Patent granted by William Penn Esq; as Proprietary and Governor of the Province of Pensilvania and Territories thereunto belonging (which Titles he constantly takes in his Acts, tho', being long, it is not always recited in this Abstract) whereby he grants in Fee, to William Emmitt, 400 Acres of Land in the County of Sussex, on the West side of Delaware Bay, and on the South side of Herring Creek, proceeding out of the Middle Creek from Rehoboth Bay,

To be held of the said William Penn and his Heirs, Proprietary as aforesaid, as of his Manor of Worminghurst in the said County; yielding and paying 4 Bushels of Wheat yearly. In Witness whereof I have caused these my Letters to be made patent, witness myself at Philadelphia in the 4th Year of my Government. Sussex Records, No. 17. Fol. 27.

Same Day.

Another like Patent from him to Richard Stevens in Fee, for 550 Acres in the said County of Sussex, on the West side of Delaware Bay and on the North side of the River called the South River, formerly called the Indian River, rendering 5 Bushel and $\frac{1}{2}$ of Wheat yearly. Sussex Records, No. 17. Fol. 28.

Apr. 18.

A Return of a Survey, made by J. Barkstead, by Order of William Clarke, by vertue of a Warrant from Sussex Court, directed to the said William Clarke Chief Surveyor, for Andrew Depree and John Barker, of a Tract of Land called Fairefields, on the South side of the Indian River, in the County of Sussex and Territories of the Province, adjoining to the Land of Thomas Hall, beginning, &c. containing and laid out for 645 Acres. Surveyor General's Office, No. 8. Fol. 2.

Same Day.

Another like Return of a Survey, made by Do, by order of Do, by vertue of a Warrant from said Court, for John Okey, of Land called Mullatto Hall, on the South side of Indian River in the County of Sussex and Territories of the Province of Pennsylvania, beginning, &c. &c. containing and laid out for 800 Acres. Surveyor General's Office, No. 8. Fol. 3.

Apr. 19.

Another like Return of a Survey, made by Do, by Order of Do, by vertue of a Warrant from said Court, for John Croper, of Land called the Lady's Delight, on the South side of the Indian River, in the County of Sussex and in the Territories of the Province of Pennsylvania, adjoining to the Lands of John Okey and John Barker, beginning, &c. containing and laid out for 1,000 Acres. Surveyor General's Office, No. 8. Fol. 2.

1684, *May 12.*

Another like Return of a Survey, made by Do, by Order of Do, by vertue of a Warrant from said Court, for John Vines, of a Tract of Land called Barkin, on the South side of the Indian River in the County of Sussex in the Territories of the Province of Pennsylvania, on the South-East side of the first Fork of the said River called South-West Branch, beginning

&c. containing and laid out for 500 Acres. Surveyor General's Office, No. 8. Fol. 4.

Same Day.

Another like Return of a Survey, made by Do, by order of Do, by order of a Warrant of said Court, for John Kipshaven of a Tract of Land called Nonsuch, on the South side of the Indian River, in the County of Sussex and in the Territories of the Province of Pensilvania, adjoining to the Land of John Okey, beginning, &c. containing and laid out for 500 Acres. Surveyor General's Office, No. 8. Fol. 3.

May 13.

Another like Return of a Survey, made by Do, by Order of Do, by vertue of a Warrant from said Court, for Alexander Maulstone, of a Tract called Cattle's Delight, on the South side of the Indian River, in the County of Sussex in the Territories of the Province of Pensilvania, adjoining to the Land of John Kipshaven, beginning, &c. containing and laid out for 1,000 Acres. Surveyor General's Office, No. 8. Fol. 49.

Note well.

These 8 very early Surveys, for the Duke of York, Mr. Penn himself, Andrew Depree and John Barker, for John Okey, for John Croper, for John Vines, for John Kipshaven, and for Alexander Maulstone, all on the South side of Indian River, and even down to Assawarmett, are very material to fix our Cape Hinlopen.

June 1.

Besides the foregoing Return made by Barkstead the Deputy Surveyor, there is, at the Foot of the Return for the Duke of York's Manor, the following additional Return, from William Clarke the Chief Surveyor, viz. I hereby certify into the Proprietary's Secretary's Office, that I have caused to be surveyed and laid out, unto James Duke of York, the Land above mentioned, and is accordingly entered and recorded in my Office. Given under my Hand at Lewis 1 June 1684. William Clarke Chief Surveyor of the Counties of Sussex and Kent. Surveyor General's Office, No. 8. Fol. 1.

Same Day.

The like additional Return from the Surveyor General for Mr. Penn's own Tract. Surveyor General's Office, No. 8. Fol. 1.

July 10.

The like additional Return for Andrew Depree and John Barker's Tract. Surveyor General's Office, No. 8. Fol. 2.

Same Day.

The like for John Okey's. Surveyor General's Office, No. 8. Fol. 3.

Same Day.

The like for John Croper. Surveyor General's Office, No. 8. Fol. 2.

Same Day.

The like for John Vines. Surveyor General's Office, No. 8. Fol. 4.

Same Day.

The like for Alexander Maulstone. Surveyor General's Office, No. 8. Fol. 4.

Nov. 2.

From Sussex County. the Enrollment of a Patent granted by Thomas Loyd, James Claypole, and Robert Turner, Commissioners appointed under the Great Seal by William Penn Proprietary and Governor, &c. to grant and sign Warrants and Patents for Land; granting in Fee unto John Croper his said particular Parcel of Land, containing 1000 Acres called Lady's Delight, so surveyed and returned as aforesaid, rendering Rent to the said Proprietary and his Heirs one Bushel of Wheat for each hundred Acres. Sussex Records, No. 17. Fol. 29.

Feb. 1.

The like additional Return from the Chief Surveyor for John Kipshaven's above mentioned 500 Acres. Surveyor General's Office, No. 8. Fol. 3.

Along with the 8 Surveys below Indian River, mentioned in this Chapter, are returned Maps or Plans how those several Persons Lands lay: But they are, more sensibly, denoted and marked in the General Map of Pensilvania herein after mentioned, which is (as well as these particular Maps) proved in the Cause, and shew the material Situation of these Tracts, so early granted out by Mr. Penn. But these particular Maps or Plans are in Records from the Surveyor General's Office, No. 8.

1685, *Octo.* 2.

From the Records in the Master of the Rolls Office in Pensilvania, the Copy of the following Indian Deed; whereby Lare, Packenah, Jareckham, Sickais, Pettquessit, Towis, Essenpenaick, Petkhoy, Kekelapan, Ecomus, Machaloha, Methcongga, Wissa, Powey, Indian Kings, Sachemakers, right Owners of all the Lands from Quing Quingus Creek, called Duck Creek, unto Upland, called Chester Creek, all along by the West-side of Delaware River, and so, between the said Creeks, backward,

as far as a Man can ride in two Days with a Horse, for and in Consideration of the there following Goods, to them in hand paid and secured to be paid by William Penn Proprietary and Governor of the Province of Pensilvania and Territories thereof, do bargain and sell to the said William Penn his Heirs and Assigns for ever, the aforesaid Tract of Land with all the Woods, Runs, Creeks and Appurtenances to the same belonging. To be held, used, possest and enjoyed by the said William Penn his Heirs and Assigns for ever, without any Molestation by them or any other Indians. Witness their Hands and Seals, with 13 Labels and Seals and Mark thereto, and witnessed by 9 Christian Witnesses and 5 Indian Witnesses. This Copy from the Records is proved by Mr. Brokden, Deputy Master of the Rolls in Pensilvania, and is in Pensilvania Records, No. 7. Fol. 3.

And now we shall go back again to see what was transacted in England during these three Years, which would have been very obscure if intermixt with the America Proceedings.

CHAP. VII. *An Account of what past (in England) in the Years 1683, 1684, and 1685, being the first Contest or Suit between Lord Baltimore and Mr. Penn, viz.*

Note.

In April 1683, the Duke of York was obtaining a further Grant, from the King to himself, of the three lower Counties, in a more ample manner than that which he had before; and it was very near passing, if it did not actually pass, the Great Seal; but we can't find an Enrollment of it, to shew thereby that it did actually pass the Great Seal.

And indeed the Defendant has proved a Copy of this intended Patent, from the Bill remaining at the Signet Office, and an Entry made relating to it at the Privy Seal Office; and has also examined Mr. Sharp's Clerk, Hamersley, to prove that he cannot find that Patent enrolled, at the Chappel of the Rolls, as it ought to have been, had it passed the Great Seal.

As the Defendant has proved it, we design to move for Leave to examine a Witness viva voce to prove Copies, on our part, at the Hearing, because, altho' it might not pass, yet, it contains such a Description of the South Bounds of the lower Counties as is extremely material for us.

1683, Apr. 13.

A Bill signed by Sir R. Sawyer and now remaining at the Signet Office, containing the King's Grant to the Duke of York, in Fee; which recites that the Duke of York had surrendered

to the King the Letters Patent dated 22d March last, which Surrender his Majesty had accepted and thereby did accept. Therefore the King, of his especial Grace, &c. Grants unto the Duke of York, in Fee.

All that the Town of Newcastle, otherwise called Delaware, and Fort therein, or thereunto belonging, scituate, lying and being between Maryland and New Jersey in America, And all that River called Delaware, and Soil thereof, and all Islands in the said River.

And all that Tract of land, upon the West side and River of Delaware which lieth from Skoolkil Creek, upon the said River, unto Bombeys-hook, and, backwards, into the Woods, so far as the Minqua's Country.

And, from Bombeys-hook, on the said River and Bay, unto Cape Henlopen, now called Cape James, being the South Point of A Sea Warmett Inlett: and backwards, into the Woods, three Indian Days Journies: Being formerly the Claim or Possession of the Dutch, or purchased by them of the Natives, or which was by them first surrendered unto our Lieutenant Governor Colonel Nicholls, and which hath since, been surrendered unto Sir Edmund Andros, Lieutenant Governor to our said dearest Brother James Duke of York, and hath for several Years been in his Possession.

With the general Words following, and Powers of Government, &c. This is Exhibit Signet Office.

Apr. 16.

An Endorsement upon the Bill thus, viz. *Expenditure apud Westmonaster. 16 die Aprilis anno regni Regis Caroli Secundi tricesimo quinto. Per Morice.*

Apr. 16.

An Entry or Docket in the Books at the Signet Office, and at the Privy Seal Office of the said Bill. These are also Exhibits markt Signet Office, and Privy Seal Office.

Apr. 16.

Another Entry in the books at the Hanaper Office, viz. A Grant to James Duke of York of the Town of Newcastle alias Delaware scituate between Maryland and New Jersey in America, to him and his Heirs. At the Foot of which Entry the Clerk of the Hanaper certifies that that Grant did pass the Great Seal. (For they are not entered there unless they pass)—Han. Off.

Note.

Three things arise upon this intended Patent, even if it did not pass. 1. If this Patent did not pass, neither did the Duke of York's Surrender of his former Patent pass. 2. Please to re-

mark well where the South Bounds of the three Lower Counties were then expressly described to be. And 3. Tho' the Suit and Contest, then beginning, lasted three Years, and my Lord Baltimore insisted that the whole Counties were within the Extent and Limits of his Grant of Maryland; yet, when that was flatly adjudged against him, and when the Proposal was made, for ending the Difference, and he had time allowed him to consider of, and make any Objections to, the Terms, he never pretended then that those South Bounds went at all too low, or ever objected to them then: which is the more material as the South Bounds of the lower Counties, taken by the present Agreement, are most precisely and exactly, what was then designed for the South Bounds thereof, if that Patent had passed in 1683.

Apr. 17.

Tuesday, April 17th 1683. Present Lord Keeper, Lord President, Lord Privy Seal, Earl of Craven, Lord Viscount Fauconberg, Earl of Rochester, Bishop of London, Mr. Secretary Jenkins. My Lord Privy Seal produces a Letter, to himself, from the Lord Baltimore, dated the 8th of February 1682, with two other Papers inclosed, the one being an Account of the Conference held in Maryland, between the Lord Baltimore and William Penn, and the other containing a Narrative of the whole Proceedings betwixt them; whereby it appears, that great Contests have arisen between them, concerning the Bounds of their Provinces: it being also alledged therein, that Mr. Penn has written a Letter, dated the 16th of September 1681, which was directed to James Frisby and others, at their Plantations in Pensilvania, which the Lord Baltimore does assert to be within the Bounds of his Propriety, wherein Mr. Penn does, nevertheless, advise them, that, as he was confident and ready to believe, they were within his Bounds, they should not pay any more Taxes or Sessments, by any Order or Law of Maryland; Whereupon the Inhabitants of Baltimore and Cecil County, having refused to pay their Levys, the Lord Baltimore and his Council had immediately issued out Orders to the Military Officers of those Counties, to assist their respective Sheriffs in the due Execution of their Office, which had been, with great Difficulty, effected; Whereupon, it is ordered, that my Lord Keeper have a View of the several Boundaries of the Patents granted to the Lord Baltimore and Mr. Penn, as also to his Royal Highness, of Newcastle, which his Lordship is desired to consider of, and to report his Opinion to the next Committee; when the Agents of the Lord Baltimore and Mr. Penn are to attend; and in the mean time, that Application be made to his Royal Highness, that he would please not to pass any Conveyance to Mr. Penn of those Parts, until the Bounds between

the Lord Baltimore and him be settled. Memorandum. Sir John Werden was accordingly attended, from the Committee, and promised to represent their Desires to his Royal Highness. It is also agreed, by the Committee, that Letters be written to the Lord Baltimore and Mr. Penn, advising them to come to a fair and speedy Composure of the Matters in Difference betwixt them. This is proved by Mr. Gellibrand, and is Exhibit Botra No. 22. Fol. 1.

Note.

This shews the Reason why the then passing Grant, to the Duke, was stopt. It also shews why the Duke did not make a formal Conveyance to Mr. Penn. For Lord Baltimore's Complaint and Claim of Right, which came over hither first of all by his Letters, and was, afterwards, turned into a Petition, wherein he claimed the whole three lower Counties, put a stop to any further Grant from the King to the Duke, and also from the Duke to Mr. Penn, until such time as that the Lord Baltimore's Claim should be examined into.

Apr. 27.

Friday, April the 27th 1683. Present Lord Keeper, Lord President, Duke of Ormond, Earl of Clarendon, Lord Chamberlain, Earl of Rochester, Earl of Sunderland, Earl of Chesterfield, Earl of Craven, Mr. Secretray Jenkins, Mr. Chancellor of the Exchequer. Their Lordships being acquainted that an Agent from the Lord Baltimore attended without, concerning the Boundaries in Difference between Mr. Penn and his Lordship, it is ordered, that the said Agent be told, that if he has any Matter of Complaint, he may represent the same, by Petition, to his Majesty in Council. This is proved by Mr. Gellibrand, and is Exhibit Botra No. 22. Fol. 4.

May 30.

Thursday, May the 30th 1683. Present Lord Keeper, Lord President, Lord Privy Seal, Earl of Peterborough, Earl of Craven, Earl of Clarendon, Earl of Rochester, Lord Dartmouth Mr. Secretary Jenkins. A Reference, dated the 31st May, upon the Petition of Richard Burke, Servant to my Lord Baltimore, being read, praying that a Grant, which is passing to his Royal Highness, of the Parts adjacent to Delaware Bay, may not pass the Great Seal, until his Majesty shall be satisfied concerning the extent of Lands granted to the Lord Baltimore, Council learned in behalf of his Royal Highness, together with an Agent from Mr. Penn. who solicits the passing of this Grant, as also the Petitioner Mr. Burke, and his Council learned, are called in: Whereupon the Council for my Lord Baltimore affirming, that the Tract of Land in Question lies within

the Limits of the Charter granted to the Lord Baltimore, and that his Lordship has, always, continued his Claim thereunto. Mr. Penn's Agent, and the Council in behalf of his Royal Highness, endeavoured to make out, that this Territory was never possessed by my Lord Baltimore, but originally inhabited by Dutch and Swedes, and that the Grant to my Lord Baltimore was only of Lands not inhabited by Christians; so that, a Surrender having been made of the Country to his Majesty in 1664, the Lord Baltimore can have no rightful Claim thereunto; and that it having been, ever since, in the Possession of his Royal Highness, the Lord Baltimore can receive no Injury by the Grant that is desired. Upon the whole Matter, Mr. Penn's Agent undertaking to prove, within a short time, that this Country was possessed by the Dutch and Swedes in the Year 1609, or at least, before the Date of the Lord Baltimore's Patent, their Lordships agreed to meet again, as soon as the Proofs shall be ready for making out the same. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 22. Fol. 5.

May 31.

At the Court at Hampton-Court the 31st of May 1683. By the King's Most Excellent Majesty, and the Lords of his Majesty's most Honourable Privy Council. Upon reading this Day at the Board the Humble Petition of Richard Burke Gent. Servant to the Right Honourable Charles Lord Baltimore, praying, in behalf of his Lordship, that a Grant (which is passing) from his Majesty to his Royal Highness the Duke of York, of the Town of Newcastle, and the adjacent Country, on the Confines of Maryland may not pass the Great Seal, until his Majesty shall be satisfied of the Extent of Letters Patent formerly granted to Cecill Lord Baltimore, wherein the said Town and adjacent Country is alledged to be comprized. His Majesty in Council was pleased to order, that the Examination of that whole Matter be, and it is hereby, referred to the Right Honourable the Lords Committees of this Board, for Trade and Foreign Plantations, and, upon their Lordships Report of the State thereof, with their Opinion thereupon, his Majesty will declare his further Pleasure. Sign'd Phil. Loyd. This is proved by Mr. Gellibrand and is Exhibit Botra, No. 21. Fol. 1.

1683. *June 12.*

Tuesday the 12th of June 1683. Present Lord Archbishop of Canterbury, Lord Keeper, Lord President, Lord Privy Seal, Earl of Rochester, Earl of Craven, Lord Bishop of London, Lord Dartmouth, Mr. Chancellor of the Exchequer, Mr. Godolphin. The Agents on behalf of the Lord Baltimore and Mr. Penn are called in, and Council learned being heard on both sides, the

Question is stated between them, viz. Whether, in the Year 1632, the Dutch were possessed of the Lands claimed by Mr. Penn: which Mr. Penn's Agent undertakes to prove, in a short time, and their Lordships will then take this Matter into further Consideration. This is Exhibit Botra, No. 22. Fol. 7.

Aug. 14.

A Letter from Mr. Penn to the Right Honourable the Lords of the Committee for His Majesty's Plantations at Whitehall. Philadelphia the 14th of the 6 month, Aug. 1683. Tho' it be a Duty I humbly own, to inform the Lords of the Committee of Plantations of what concerns his Majesty's interest in the Success of this Province, I thought myself equally obliged to be discreet and cautious in doing it: To write when there was need, and not trouble Persons, of their Honour and Business, with Things trivial, at least raw and unfinished for their View. This, hitherto, put me by, giving any Account of the State of our Affairs; To say nothing of the mighty Difficulties I have laboured under, in the Settlement of six and twenty Sail of People, to Content, within the Space of one Year, which makes my Case singular, and excusable above any other of the King's Plantations. But, because my Agent has informed me, that the Proprietor of Maryland, has been early in his account of our Conference, about the fixing of our Bounds, and made a Narrative of my Affairs, as well before, as at that Time, a little to my Disadvantage, and the rather, because my Silence might be interpreted Neglect, I am necessitated to make some Defence for myself, which, as it will not be hard to make, so I hope it will be received as just. I humbly say then first, that it seemed to me improper to trouble the Lords with my Transactions with this Proprietor, till we were come to some Result; which we were not, for we parted till Spring, and even then, were but to meet about the Methods of our Proceeding. Next, this Narrative was taken, by this Lord's Order, without my Consent or Knowledge, in a Corner of a Room, by one of his own Attendants. And lastly when, upon Notice given of this Usage, I complained to him, he promised, upon his Word and Honour it should go no further, and that it was for his own Satisfaction he did it. I told him, that mitigated the Thing a little: but, if he should divulge it, before I saw and agreed the Copy, he must pardon me if I lookt upon it as a most unfair Practice: what that Lord has done, and what to call it, I leave to my Betters, but the Surprise and Indigestion of the whole, will I hope excuse me of Neglect or Disrespect: for tho' I am incereemonious, I would by no means act the rude or undutiful. This said, I humbly beg that I may give a brief

Narrative of the Matter, as it then past, since has been, and now stands, without the Weakness and Tautology his Relation makes me guilty of.

So soon as I arrived, which was on the 24th of October last, I immediately dispatht two Persons to the Lord Baltimore, Proprietary of Maryland, with my Respect, to ask of his Health, offer kind Neighbourhood, and agree a Time of meeting, the better to establish it. While they were gone in this Errand, I went to New-York, that I might pay my Duty to the Duke, in the Visit of his Government and Colony; at my Return, which was towards the End of November, I found the Messengers I had sent to Maryland newly arrived, and the Time fixed being the 19th of December, I prepared myself, in a few Days, for that Province; the 11th of that Month, I came to West River, where I met the Proprietor, attended, suitable to his Character; who took that Occasion, by his Civilities, to shew me the greatness of his Power; the next Day, we had a Conference, about our Business of the Bounds, both at the same Table, with our respective Members of Council. The first, Thing I did, was, to present the King's Letter, which consisted of two Parts, one, that the Lord Baltimore had but two Degrees, and the other, that, beginning at Watkins's Point, he should admeasure his said Degrees, at 60 Miles to a Degree. This, being read by him, first privately, then publicly, he told me that the King was greatly mistaken, and that he would not leave his Patent to follow the King's Letter, nor could a Letter void his Patent, and by that he would stand. This was the Substance of what he said from first to last, during the whole Conference. To this I answered, that the King might be misinformed, rather than mistaken, and that I was afraid the Mistake would fall of his Side; for, though his Patent begins at Watkins's Point, and goes to the 40th Degree of North Latitude, yet, it presumed that to lie in thirty-eight, else Virginia would be wronged, that should extend to that Degree; however, this I assured him, that when I petitioned the King for five Degrees North Latitude, and that Petition was referred to the Lords of the Committee of Plantations, at that time, it was urged by some present, that the Lord Baltimore had but two Degrees, upon which the Lord President turning his Head to me, at whose Chair I stood, said, Mr. Penn, will not three Degrees serve your turn? I answered, I submit both the what, and how, to the Honourable Board. To this, his Uncle and Chancellor returned, that, to convince me, his Father's Grant was not by Degrees, he had more of Virginia given him, but, being planted, and the Grant intending only Land not planted or possess but of Savages, Natives, he left it out, that it might not forfeit

the rest, of which the Lord Baltimore takes no notice in his Narrative, that I remember; but, by that Answer, he can pretend nothing to Delaware, that was, at and before, the passing of that Patent, bought and planted by the Dutch, and so could not be given; but, if it were, it was forfeited, for not reducing it during twenty Years, under the English Sovereignty, of which he held it; but was at last reduced by the King, and therefore, his to give as he please it. Perceiving that my pressing the King's Letter, was uneasy, and that I had determined myself to dispose him, with utmost Softness, to a good Compliance. I waved that of the two Degrees, and prest the measurement only, the next Part of the Letter: for, tho' it were two Degrees and half from Watkins's Point to Forty, yet let it be measured at 60 Miles to a Degree, and I would begin at Forty, fall as it would, my Design was, that every Degree, being seventy Miles, I should get all that was over sixty, the Proportion intended the Lord Baltimore by the Grant, and the Computation of a Degree at that time of the day. Thus, he had enjoyed the full Favour intended him, and I had gained a Door, of great Importance to the peopling and improving of this his Majesty's Province: But this, he also rejected; I told him, it was not the Love, or Need, of the Land, but the Water; that he abounded in what I wanted, and had Access and Harbourage even to Excess; that I would not be thus importunate, but for the Importance of the Thing, to save a Province: and, because there was no Proportion in the Concern, if I were hundred times more urgent and tenacious, the Case would excuse it; because the Thing is insisted on, were more than ninety-nine times valuable to me, than to him: To me the Head, to him the Tail. I added, that if it were his, and he gave it me, planting it would recompence the Favour, not only by laying his Country between two thriving Provinces, but the Ships that come yearly to Maryland for Tobacco, would have the bringing of both our People and Merchandize, because they can afford it cheaper, whereby Maryland would, for one Age or two, be the Mart of Trade: but this, also, had no other Entertainment, but hopes that I would not insist on these Things at our next Meeting. After three Days time we parted, and I returned to this Province. When the Spring came, I sent an Express, to pray the time and Place when and where I should meet him, to effect the Business we adjourned to that Time. I followed close upon the Messenger, that no Time might be lost; but the Expectation he twice had, of the Lord Culpepper's Visit, disappointed any Meeting in our Affair, till the Month called May. He, then, sent three Gentlemen, to let me know he would meet me at the Head of the Bay of Chesapeake. I was then in Treaty

with the King of the Natives, for Land, but, three Days after, we met, ten Miles from Newcastle, which is thirty from the Bay; I invited him to the Town, where, having entertained him as well as the Town could afford on so little Notice, and finding him only desirous of speaking with me privately, I prest that we might, at our distinct Lodgings, sett severally, with our Councils, and treat by way of written Memorials, which would prevent the Mistakes or Abuses that may follow from ill Designs, or ill Memory; but he avoided it, saying he was not well, the Weather sultry and would return with what Speed he could; reserving any other Treaty to another Season. Thus we parted, at that time. I had been, before, told by divers, that the Lord Baltimore had issued forth a Proclamation, to invite People, by lower Prices, and greater Quantities of Land, to plant in the Lower Counties, in which the Duke's Goodness had interested me as an inseparable Benefit to this whole Province; I was not willing to believe it; and he, being in haste, I omitted to ask him; but I had not been long returned, before two Letters comes from two Judges of the two County Courts, that such a Proclamation was abroad, that the People adhorr'd to hearken to it, but yet, prayed my Directions. I bid them keep their ground, and not fear, for the King would be Judge. Upon this, I dispatcht. to the Lord Baltimore, three of my Council, with the Clerk of it: as they went, they got an Authentick Copy, under the Hand of one of his Sheriffs, to whom an Original had been directed; but, as the last Civility I could yield him, I forbid them to seem to believe any thing, but what they had from his own Mouth: Thus, they delivered my Letter; at first, he denied any such Proclamation, turning to two Gentlemen of his Council that stood by, asked them, if they remembered any such thing? They also denied it; upon which, the Persons I sent, produced the attested Copy, which, refreshing their Memories, they confessed there was such a Proclamation, but the Lord Baltimore told them, that it was his ancient form, and he only did it to renew his Claim, not that he would encourage any to plant there. They then prayed him to call it in, lest any trouble should ensue, but he refused it. This was, during a Civil Treaty, without any Demand made, and after the Place had been, for many years, in the quiet Possession of the Duke. What to call this, I still humbly refer to my superiors; for his Pretensions to those Parts, I have thoroughly instructed my Agent, who I hope will be able to detect them of Weakness and Inconsistency. This is a true, tho' brief, Narrative of the Entertainment I have had from that Lord, in the Business between us. And because I have, as in Duty bound, sent an Agent Extraordinary, to wait upon the King and his

Ministers, in the Affairs of this Province, (so soon as I Could make any Settlement in it) I shall only humbly pray leave to hint at two or three Things, relating to the Business depending between this Lord and myself, about finding the Fortieth Degree of North Latitude. 1st. That I have common Fame on my side, grounded upon an ancient and constant Judgment, that the fortieth Degree of North Latitude lieth about Pool's Isle; this the Lord Baltimore himself hath not denied, the Country confesseth, and I shall, when required, prove by some able Masters of Ships. 2d. If this were an Error, it is grounded upon such Skill and Instruments as gave measures to the Times in which his Patent was granted; and if he hath got upon Virginia, by that Error, he should not get upon me, by an exacter Knowledge; considering that Carolina, which endeth by Degrees, would as much advance upon Virginia, if the reputed Latitude of unprejudiced Times should take no place; for, by advancing her Bounds twenty Miles, by a new Instrument, beyond the Place which hath generally been taken for $36\frac{1}{2}$; and Virginia not being equally able to advance, upon Maryland, (because of it's beginning at a Place certain) she will be greatly narrowed between both. 3dly. I, therefore, most humbly pray, that the Judgment of Ancient Times, by which Persons, at the Distance of England from America, have governed themselves, may conclude that Lord's Bounds; or, that he may measure his two Degrees according to the Scale and Computation of those Times, which was sixty Miles to a Degree; or, if it be allowed that he had not his Grant by Degrees, that, at least, I might not lose the Benefit of Admeasurement, as before mentioned, from Watkin's Point (in whatsoever Degree of Latitude that shall be found) to the fortieth Degree of North Latitude; which I humbly take the more courage to press, because a Province lieth at stake in the Success of it. I have only humbly to add that the Province hath a Prospect of an extraordinary Improvement, as well by divers Sorts of Strangers, as English Subjects; that, in all Acts of Justice, we name and venerate the King's Authority; I have exactly followed the Bishop of London's Council, by buying, and not taking away, the Natives Land, with whom I have settled a very kind Correspondence. I return my most humble Thanks for your former favours in the passing of my Patent, and pray God reward you. I am most ready to obey all your Commands, according to the Obligations of it, and beseech you to take this Province into your Protection under his Majesty, and him, whom his Goodness hath made Governor of it, into your Favour; for that I am, with most sincere Devotion, Noble Lords, your thankful faithful Friend and Servant to my Power (sign'd) William Penn. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 20.

Feb. 12.

Memorandum concerning Pensilvania, received and read 12th February 1683. A certain Tract of Land, in America, having been surrendered, long since, by the Dutch to the King, and, ever since, in the Possession of his Royal Highness; His Royal Highness having demised it to William Penn Esq; (lying contiguous to Pensilvania) at a Rent; the Lord Baltimore now disturbs William Penn, and his Agents there, and opposes the passing of a Patent of it to his Royal Highness here. And, upon a Hearing before the Lords of the Committee of Plantations, it being alleged in the behalf of his Royal Highness, that this Tract of Land was inhabited by Christians, before the Lord Baltimore's Patent, which extended only to Land uninhabited by Christians, it was ordered that they should be ready with Proofs to that Point. It is now desired, in the behalf of his Royal Highness a Day may be appointed to be heard to it. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 21. Fol. 2.

Feb. 12.

Tuesday 12th February 1683. Present Lord Keeper, Earl of Bridgewater, Earl of Clarendon, Mr. Secretary Jenkins. Upon reading a Paper, delivered by the Agent of Mr. Penn, Proprietor of Pensilvania, wherein it is desired, that a Day may be appointed to hear the Difference between the Lord Baltimore and the said William Penn, touching a certain Tract of Land in America, now in the Possession of his Royal Highness. Their Lordships take notice of a Letter, lately received from the Lord Baltimore, wherein his Lordship desires that the Hearing of this Matter may be deferred till April next, when he intends to come into England. Whereupon it is agreed that this Business be postponed until the Month of April next, unless the Agent of the Lord Baltimore be ready to bring the Matter in difference to a Hearing before that time. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 22. Fol. 8.

1684. *July 2.*

Wednesday July 2d, 1684. Present Lord Keeper, Lord President, Lord Privy Seal, Duke of Beaufort, Earl of Rochester, Lord Viscount Fouconberg, Lord Dartmouth, Sir Leolin Jenkins. A Letter from Sir Edward Herbert, Solicitor to his Royal Highness, read, representing the Prejudice that his Royal Highness may suffer by a further Delay of the Business now depending before their Lordships, between Mr. Penn Lessee to his Royal Highness, and the Lord Baltimore, for the Lands in Delaware. Whereupon, their Lordships order that the Lord Baltimore's Agent have notice to attend on Wednesday the 16th Instant. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 22. Fol. 9.

July 16.

Wednesday July 16th 1684. Present Lord Archbishop of Canterbury, Lord Keeper, Lord Privy Seal, Earl of Craven, Earl of Nottingham, Earl of Rochester, Lord Bishop of London, Lord Dartmouth, Mr. Chancellor of the Exchequer. The Agents of my Lord Baltimore and Mr. Penn attending, their Lordships appoint to take the matter in difference between them into further Consideration, on Wednesday next, at four in the Afternoon, at which Time all Parties are to attend. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 22. Fol. 10.

July 23.

Wednesday July 23d 1684. Present Lord Keeper, Lord President, Lord Privy Seal, Earl of Craven, Earl of Rochester, Mr. Secretary Godolphin, Sir Leolin Jenkins, Mr. Chancellor of the Exchequer. My Lord Baltimore attending, upon the Difference between his Lordship and Mr. William Penn, touching the Boundaries of Maryland and Pensilvania, his Lordship, and Mr. Ford, Agent for Mr. Penn, are called in, and Mr. Ford declaring that he could not be ready for Hearing, because Sir Edward Herbert, Solicitor to his Royal Highness, whose Lessee Mr. Penn is, was gone upon his Circuit, and that he could not get other learned Council: Their Lordships appoint this Matter to be heard the first Tuesday after Michaelmas, at which Time all Parties are to be ready with their Proofs and Evidences of the Right. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 22. Fol. 11.

Sept. 30.

Tuesday Sept. 30th 1684. Present Lord Keeper, Earl of Rochester, Lord President of his Majesty's Council, Lord Privy Seal, Earl of Sunderland, Earl of Clarendon, Earl of Craven, Earl of Middleton. My Lord Baltimore, and the Commissioners of his Royal Highness, under whom Mr. Penn claims a Tract of Land about Newcastle in the Province of Delaware, together with their Council learned, are recalled in, and it being alledged by Sir Edward Herbert, his Royal Highness's Solicitor, that the Proofs in this case depend chiefly upon Mr. Penn's coming into England, where he was soon expected, their Lordships appoint the Business to be heard on the 9th Day of December next, at which Time Mr. Penn is expected here. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 22. Fol. 12.

1684, *Dec. 9.*

Tuesday December 9th 1684. Present Lord Keeper, Earl of Hutingdon, Earl of Bridgewater, Earl of Sunderland, Earl of Craven, Earl of Middleton, Lord Viscount Fauconberg. The

Difference depending between my Lord Baltimore and Mr. Penn, being appointed to be heard this Day; was put off to another Time. This is proved by Mr. Gellibrand, and is Exhibit Botra, No 22. Fol.13.

March 17.

Tuesday March 17th 1683. Present Lord Keeper, Lord President, Lord Privy Seal, Duke of Beaufort, Earl of Sunderland, Earl of Craven, Earl of Ailsbury, Lord Viscount Fauconberg, Lord Godolphin, Mr Chancellor of the Dutchy. A Letter from Mr. Penn, dated this Day, is read, praying that he may have an Order for quieting the Possession of the Lands in Delaware, as his Majesty had placed it, till the Difference between Mr. Penn and the Lord Baltimore be heard, but their Lordships do not think fit to do any thing therein. This is proved by Mr. Gellibrand, and is the Exhibit Botra, No. 22. Fol. 14.

1685. *Aug. 18.*

Received from the Earl of Middleton 18th August 1685. Read the same Day. To the King's Majesty. The Petition of William Penn, with all Humility sheweth, That his Petitioner has long waited, to his great Detriment, the Decision of the Matter in Difference between the Lord Baltimore and himself, under the King's Name and gracious Protection, about the Bounds of the Lands which he received from the King when Duke; and, tho' he has been referred to the Issue of the Quo Warranto upon the Lord Baltimore's Patent, yet, since this Stay is of the greatest Prejudice to his Majesty's Province, and a Ruin to his Petitioner and his Family, as he is ready to evince, and that it is about a Title of Land, and not of Power, and so, not the Question the Quo Warranto goes upon; for that Dispute would remain, tho' the King's Suit about Power were issued; His Petitioner most humbly prays his Case may be recommended to the Lords of Plantations, and a short Day set to hear and determine this Business; and his Petitioner shall ever heartily pray, Signed William Penn. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 21. Fol. 3.

Aug. 18.

Tuesday 18th August 1685. Present, Lord Treasurer, Lord President, Earl of Bridgewater, Earl of Sunderland, Earl of Craven, Earl of Middleton, Lord Godolphin, Mr. Chancellor of the Dutchy. Upon the Petition of William Penn Esq; referred to the Committee, setting forth that the Difference between my Lord Baltimore and the Petitioner, is about a Title of Land, and not of Power, and so not, the Question of the Quo Warranto issued against my Lord Baltimore, and therefore, praying that a short

Day may be set for hearing and determining the same, their Lordships appoint to hear the Difference between the Lord Baltimore and the Petitioner, concerning the Boundaries and Title of Soil in America on Wednesday the 26th of this Month, at 4 in the Afternoon, and order Notice thereof to be given to both Parties accordingly. This is proved by Mr. Gellibrand, and is the Exhibit Botra, No. 22. Fol. 15.

Aug. 26.

Thursday the 26th of August 1685. Present, Lord Treasurer, Lord President, Earl of Bridgewater, Earl of Craven, Earl of Nottingham, Lord Viscount Fauconberg, Lord Bishop of London, Earl of Middleton, Mr. Chancellor of the Dutchy. The Lord Baltimore and Mr. Penn attending, upon the Differences between them, touching Boundaries, and Title of Soil, in America, are called in, and their Lordships appoint to hear this Business on Wednesday the 2d of the next Month, when both Parties agreed to attend without Council. This is proved by Mr. Gellibrand, and is the Exhibit Botra, No. 22. Fol. 16.

Sept. 2.

Tuesday the 2d of September 1685. Present, Lord President, Lord Privy Seal, Earl of Bridgewater, Earl of Craven, Earl of Middleton, Lord Viscount Fauconberg. The Lord Baltimore and William Penn Esq; attending, this Day, according to Order, upon the Difference between them, and the Boundaries of Land, and Title of Soil, in America: And Mr. Penn having produced divers Proof, to make out that the Country of Delaware was inhabited by the Swedes and Dutch before the Date of my Lord Baltimore's Patent: It is thought fit that Copies be given to the Lord Baltimore, of the said Evidences and Proofs, that his Lordship may be prepared to make his further Defence before the 30th of this Instant September; on which Day their Lordships resolve to take this Matter again into Consideration. This is proved by Mr. Gellibrand, and is Exhibit Botra, No. 22. Fol. 17.

Octob. 8.

Thursday the 8th of October 1685. Present, Lord Jefferys, Lord High Chancellor of England, Lord Treasurer, Lord President, Lord Privy Seal, Earl of Mulgrave, Lord Chamberlain, Earl of Sunderland, Earl of Craven, Lord Bishop of London, Master of the Ordnance. My Lord Baltimore and Mr. Penn attending, are called in, and both Parties being heard, my Lord Baltimore gives their Lordships an Account that, in the Year 1642, one Ployden sailed up Delaware River, and did not see any House there at that time, as is affirmed by a Deposition produced by Mr. Penn; and the Copy of a Report of the Com-

missioners of Foreign Plantations, on the 4th of April 1638, touching the Differences between the Lord Baltimore and Mr. Clayborn, about the Isle of Kent, is offered by my Lord, shewing their Opinion touching the Lord Baltimore's Right to the Isle of Kent: After which, the Deposition of Mr. Garret Van Sweeringen concerning the seating Delaware Bay and River to the Southward of the 40th Degree Northern Latitude, by the Dutch and Swedes, read. Whereupon their Lordships think fit that my Lord Baltimore procure an attested Copy of the fore-mentioned Reports, against Thursday next, when their Lordships will take this Matter into further Consideration. This is proved by Mr. Gellibrand, and is Exhibit Botra No. 22. Fol. 18.

Octob. 17.

Saturday October 17th 1685. Present, Lord Chancellor, Lord Treasurer, Lord Privy Seal, Duke of Beaufort, Lord Chamberlain, Earl of Sunderland, Earl of Craven, Earl of Middleton, Lord Dartmouth, Mr. Chancellor of the Exchequer. My Lord Baltimore and Mr. Penn are called in, and my Lord Baltimore having undertaken to procure an authentick Copy of a Report, made by the Commissioners for Foreign Plantations on the 4th April 1638, touching the Differences between my Lord Baltimore's Predecessors and William Clayborne, about the Isle of Kent, my Lord Baltimore declares that he cannot find the Original, whereby an attested Copy may be procured; Their Lordships agree to report their Opinions, that the Tract of Land, now in Dispute, does not belong to my Lord Baltimore; but, in as much as it yet remains doubtful, what are the true Boundaries of the Land called Delaware, which their Lordships now adjudge to belong to his Majesty, their Lordships will meet again for the Settlement of those Boundaries between his Majesty, and the Lord Baltimore; at which time his Lordship and Mr. Penn are to give their Attendance, and to come prepared for a final Decision therein. This is proved by Mr. Gellibrand, and is Exhibit Botra No. 22. Fol. 20.

Octob. 31.

Saturday October 31st 1685. Present, Lord Chancellor, Lord Privy Seal, Lord Chamberlain, Earl of Sunderland, Earl of Craven, Earl of Berkeley, Earl of Plimouth, Earl of Middleton, Lord Viscount Preston, Mr. Chancellor of the Exchequer. My Lord Baltimore and Mr. Penn attending, are called in, and their Lordships taking into Consideration what might be the proper Boundaries of the Country of Delaware, now in Question, it is proposed that the whole Peninsula, or Tract of Land, called Delaware, from East to West, as far as Cape

Hinlopen Southward, may be divided into two equal Parts, between his Majesty and my Lord Baltimore. Whereupon, his Lordship, desiring further time, to consider of this Proposal, the Committee allow him a Week longer, to offer his Objections. This is proved by Mr. Gellibrand, and is the Exhibit Botra No. 22. Fol. 21.

Nov. 7.

Saturday November 7th 1685. Present Lord Privy Seal, Earl of Bridgewater, Earl of Sunderland, Earl of Craven. Earl of Middleton, Lord Viscount Fauconberg, Mr. Chancellor of the Exchequer, Lord Chief Justice Herbert. My Lord Baltimore and Mr. Penn attending, concerning the Boundaries of the Country of Delaware, are called in; and being heard, their Lordships resolve to report their Opinion, to his Majesty, That, for avoiding further Differences, the Tract of Land, lying between the River and Bay of Delaware, and the Eastern Sea, on the West side, and Cheasepeak Bay on the other, be divided into two equal Parts, by a Line, from the Latitude of Cape Hinlopen, to the 40th Degree of Northern Latitude; and, that one half thereof, lying towards the Bay of Delaware and the Eastern Sea, be adjusted to belong to his Majesty; and that the other half remain to the Lord Baltimore, as comprised within his Charter. This is proved by Mr. Gellibrand, and is Exhibit Botra No. 22. Fol. 22.

Note well.

This Determination was made by Agreement of Parties, as it were, it having been before proposed to the Parties, and Time given them to consider thereof.

And this Report abundantly fixes the North Bounds of Maryland to be at the Head of Chesopeak Bay; for the Peninsula, which was so to be divided, although it had three Boundaries on the one side, namely, the River and Bay of Delaware, and the Eastern Sea, yet it had no Boundary on the other side but Chesopeak Bay only.

Again, this Report fixes, very materially for us, that the South Bounds of the lower Counties were to be from Cape Hinlopen. And the first Dutch Record, of the Year 1630, shews that was 8 large Miles, (viz. 8 Leagues) South of Delaware Bay. Besides which, Cape Hinlopen mentioned in this Report, could not be (as my Lord Baltimore now pretends) at the Mouth or Entrance of Delaware Bay; for, if so, there was no occasion to describe the Eastern Sea as Part of the Boundary of the Peninsula, which in fact it was not, in such Case, but, on the contrary, the River and Bay of Delaware would have been the only Eastern Boundaries, had Cape Cornelius been the true and ancient Cape Hinlopen.

Nov. 13.

At the Court at Whitehall the 13th Day of November 1685. Present, The King's Most Excellent Majesty, His Royal Highness Prince George of Denmark, Lord Archbishop of Canterbury, Lord Chancellor, Lord Treasurer, Lord Privy Seal, Duke of Ormond, Duke of Beaufort, Duke of Queensberry, Lord Chamberlain, Earl of Huntingdon, Earl of Bridgewater, Earl of Peterborough, Earl of Sunderland, Earl of Craven, Earl of Berkeley, Earl of Nottingham, Earl of Plymouth, Earl of Morray, Earl of Middleton, Lord Viscount Fauconberge, Lord Viscount Preston, Lord Viscount Melfort, Lord Bishop of London, Lord Dartmouth, Lord Godolphin, Mr. Chancellor of the Exchequer. The following Report, from the Right Honourable the Lords of the Committee for Trade and Foreign Plantations, being this Day read at the Board: The Lords of the Committee for Trade and Plantations having, pursuant to his late Majesty's Order in Council of the 31st of May 1683, Examined the Matters in difference between the Lord Baltimore and William Penn Esq; in behalf of his present Majesty, concerning a Tract of Land, in America, called De la Ware, Their Lordships find that the Land, intended to be granted to the Lord Baltimore's Patent, was only Land uncultivated and inhabited by Savages. And that this Tract of Land, now in Dispute, was inhabited and planted by Christians, at and before the Date of the Lord Baltimore's Patent, as it hath been, ever since, to this Time, and contained as a district Colony from that of Maryland: so that their Lordships humbly offer their Opinion, that, for avoiding further Differences, The Tract of Land, lying between the River and the Eastern Sea, on the one Side, and Chesapeake Bay, on the other, be divided, into equal Parts, by a Line, from the Latitude of Cape Hinlopen, to the 40th Degree of Northern Latitude; and that one Half thereof, lying towards the Bay of Delaware and the Eastern Sea be adjudged to belong to his Majesty, and that the other Half remain to the Lord Baltimore, as comprised within his Charter. Council Chamber 7th of November 1685. His Majesty, well approving of the said Report, It was, thereupon, Ordered, by his Majesty in Council. That the said Lands be forthwith Divided accordingly. Whereof the said Lord Baltimore and William Penn Esq; together with their respective Officers, and all others whom it may concern, are to take Notice, and give due and ready Obedience thereunto. This is proved by Dickinson, and is Exhibit Co-off. No. 4.

Note.

And thus ended this first Contest wherein many Things clearly appear. 1. That Lord Baltimore and his Council were fully heard, Great Numbers of Times, and had such Indulgence that

they ordered him Copies of Mr. Penn's Proofs. 2. That, throughout the whole Process, it is, from time to time, taken notice of as a Dispute between Lord Baltimore and Mr. Penn, and is expressly called so in the Minutes and Acts of Council, although at the same time Mr. Penn did hold under the Duke's Deeds and Covenants, and under Rent to the Duke, and, therefore, additionally, took into his aid the Duke's Name and Right. 3. That it was, in this Contest, that the then Lord Baltimore first trump up the pretended Order of Council about Clayborne of 4 April 1638, and then gave it up again. 4. That there was a flat Judgment against Lord Baltimore, that Delaware, (the Tract of Land then in Dispute) did not belong to him, and the only Doubt was, What were the true Boundaries of Delaware? 5. That a Proposition was made then, for Peace sake, and to prevent further Differences, how it should be bounded, and Time given to Lord Baltimore to offer any Objections to that Proposal. 6. That the Order, then made, for a Division, was to extend Southwards, down to Cape Hinlopen, and Northwards, not a Hair further than to the Head of Chesapeak Bay, (whereas, now, we have granted him a great many Miles higher than that) For, The Land, which was to be divided, was such as lay between Delaware River and Bay, and the Sea, on one Hand, and Chesapeak Bay, on the other. 7. Another Matter which confined the Northern End to that dividing Line is very express and remarkable, and falls in exactly with our Construction of Lord Baltimore's Patent and with the express Words of the Pensilvania Patent: for, that Dividing Line was, by this Order, to run from the Latitude of Cape Hinlopen to the 40th Degree of Northern Latitude: but not, through all that Degree, up to the 41st Degree. 8. All the World understood this as a Judgment in the Favour of Mr. Penn, who was all along said to have been a Party in the Contest; Indeed, nominally, it was said one Half should belong to his Majesty, the Duke of York being then become King. But, the very Order, itself, is directed to my Lord Baltimore and William Penn Esq; and their respective Officers, to take notice of it, and give due Obedience to it; and, had the King and Council intended to have tript up the Tenant Mr. Penn's Title, it had been a little hard and unnatural to have ordered him to run a Line, in order to get Land meerly for the King, but not for himself.

If it be askt why, after this Determination was made, Mr. Penn did not get further Assurance from the King? The Answer is, that tho' it was agreed and ordered how the Lower Counties should be divided, yet, the Line of Division was not run, but was still to be done. And even yet remains to be done. We hoped to have done it by means of the Agreement of 1732,

but that Agreement the Defendant will not execute. And, till the Division Line should be run, no regular Conveyance could be made. And that Division Line not being run in that King's Time, (who abdicated before the 7 Years which were mentioned in his Covenant expired) Mr. Penn therefore could not, at any Time hitherto, apply for further Assurance.

CHAP. VIII. *From the first Determination of the King in Council of the 13th of November 1685, down to the second Determination in the Plaintiffs Favour in the Year 1708.*

1685, Dec. 10.

From the Records in Sussex County. At a Court held in the Name of William Penn Proprietary and Governor of Pensilvania, and the Territories, at Lewes for the County of Sussex, the 8, 9, and 10th Days of December 1685. Iwottama Samam, the Indian Shackamacker of Assawawmat, signed, sealed and delivered an Indenture of Sale for 1000 Acres of Land to Norton Claypoole, called the Indian Grove, scituate on the South side of the Indian River, and acknowledge the Sale thereof to the said Claypoole, according to the Indenture of Sale signed in the Docket by Justice Watson, one of the Members of the Court. Also the same Shackamacker signed, sealed and delivered an Indenture of Sale for 500 Acres of Land, scituate on the North side of the Indian River, to Matthew Taylor Merchant of New York, and acknowledged the Sale thereof according to the Indenture of Sale. Sussex Records, No. 17. Fol. 26.

Note.

Neither of these Indentures appear: neither are they said to be recorded. This shews, however, that Courts were held in Mr. Penn's Name, that those Courts exercised Jurisdiction on both sides of Indian River, and that the Lands, about Indian River, were not then settled, but were, piece by piece, bought, from time to time, from the Indians then. And you remember there was an Order of Sussex Court made on 1 January 1680, that none should seat down on Lands, till they brought the Indians to Court to acknowledge they had sold those Lands. 1680, Sept. 14-16.

From the Sussex Records, an Indenture made in the 7th Year of the Proprietary Government, between John Oakie of the County of Sussex in the Territories of the Province of Pensilvania of the one Part, and John Barker of the other Part. It recites the forementioned Grant, from Proprietary Penn's Commissioners, to John Oakie, dated the 27th of January 1684, of Mulatto Hall, on the South side of Indian River, containing

800 Acres, now the said Oakie, in Consideration of 30*l.* alienates unto John Barker 400 Acres, being one Moyety thereof; with Warranty against all Persons, the Rents from henceforth to grow due to the Proprietary only excepted. And there is an Act of the Court held at Lewis for the County of Sussex the 14, 15 and 16th of September 1686, endorsed on the said Deed, and signed by the Clerk of the Court, that Oakie acknowledged that Sale and Conveance according to the Contents there within written. Sussex Records, No. 17. Fol. 30. 31.

4^o *Will. & Maria*, 1691. Oct. 25.

From the Chappel of the Rolls, a Commission under the Great Seal, from King William and Queen Mary, to Benjamin Fletcher Esq; It recites that Colonel Fletcher had, by Letters Patent under the Great Seal of the 18th of March then last, been appointed Governor of New York. It also recites, Fol. 4. That, by reason of great Neglects and Miscarriages in the Government of our Province of Pensilvania in America, and the Absence of the Proprietor, the same was fallen into Disorder and Confusion; by means whereof not only the Publick Peace and Administration of Justice (whereby the Crown's Subjects should be preserved in those Parts) was broken and violated, but there was also great Want of Provision for the Guard and Defence of the said Province against the Enemies of the Crown, whereby the said Province, and the adjacent Colonies, were much exposed, and in Danger of being lost from the Crown of England.

For the Prevention whereof as much as in us lies, and for the better Defence and Security of our Subjects inhabiting those Parts, during this Time of War, we find it absolutely necessary to take the Government of our Province of Pensilvania into our own Hands, and under our immediate Care and Protection.

Therefore constituted and appointed Colonel Fletcher to be Captain General and Governor in Chief in and over our Province of Pensilvania and Country of Newcastle and all the Tracts of Land depending thereon in America; and commanded him to take the said Province and Country under his Government.

And, for the better governing and ruling the said Province and Country, and the Tracts and Territories depending thereon, their Majesties gave and granted unto the said Colonel Fletcher, all and every the like Powers and Authorities, as by the former Commission was given and granted to him for the ruling and governing of New York; To be exercised, in like manner, by Colonel Fletcher, in and over our said Province of Pensilvania and Country of Newcastle, and the Territories and Tracts of Land depending thereon in America.

And to appoint, and suspend, a Lieutenant Governor, and a Council there.

To hold, exercise and enjoy the said Office and Place of Captain General and Governor in Chief in and over our Province of Pensilvania and Country of Newcastle, and the Territories and Tracts of Land depending thereon in America, during our Will and Pleasure. This Copy is proved by Mr. Buhner and is Exhibit Rocha, No. 7.

Note.

This Commission was proved not so much with any design to make use of it in our favour, as to obviate any Objection that might be made against us, that the Crown, once, took the Government from Mr. Penn; which, you are pleased to observe, was not of the lower Counties only, or upon account of any Defect of Title in Mr. Penn, but, for Reasons of State; and the Crown took the Government of Pensilvania itself from Mr. Penn, as well as that of the Lower Counties. Indeed, King William did not greatly confide in Mr. Penn, nor in the then Lord Baltimore (who was a Roman Catholick) and his Majesty wanted both their Governments into his own hands. Sundry Lawyers Opinions were taken thereon, at length, the Crown was advised that, for Reasons of State, it might be done; and thereupon, for Reasons of State it was done, both as to Mr. Penn and Lord Baltimore also. But Mr. Penn so very well cleared himself to the Satisfaction of the Crown that his Government was restored to him in less than 22 Months from the Date of this Commission, even during that War: Whereas the Crown kept the Government of Maryland in their own Hands, above 25 Years, from 1691 to 1716, before they restored that to the Lord Baltimore.

1692, *Nov.* 10.

From the Records in Sussex County an Indenture of this Date between John Barker of the County of Sussex annex unto the Province of Pensilvania and Peter Waples late of the County of Somerset in the Province of Maryland, but now of the fore-said County of Sussex Planter; reciting Patent granted by Proprietary Penn's Commissioners on 25 September 1691, unto one Richard Patte deceased, of a Tract of Land on the South side of the Indian River at the Head of a Neck of Land called Pine-Neck in the said County of Sussex, containing 300 Acres of Land, and that John Patte, Son and Heir of Richard Patte, had conveyed the same to the said John Barker; now the said Barker, for 4500 Pound of Tobacco, conveys the same to the said Peter Waples, warranted against all Incumbrances, the Rents from henceforth to grow due to the Proprietor only excepted.

With an Endorsement thereon attested by the Clerk of the Court that at a Court held at Lewis for the said County of Sussex on 5th September 1694, Barker acknowledged that Deed in open Court. Sussex Records, No. 17. Fol. 32. 33.

6^o *Will. & Maria*, 1693. *Aug.* 20.

From the Chapell of the Rolls, a Commssion under the Great Seal to William Penn Esq; recites that, upon Information that by reason of great Miscarriages in the Government of our Province of Pensilvania in America, and the Absence of the Proprietor, the same was fallen into Disorder and Confusion, by means whereof not only the Publick Peace and Administration of Justice was broken and violated, but there was also great want of Provision for the Guard and Defence of our said Province against our Enemies, whereby it was apprehended that our said Province and the adjacent Colonies were much in danger of being lost, from the Crown of England; For Prevention whereof, as much as in us lay, and for the better Defence and Security of our Subjects inhabiting those Parts during this time of War, we found it absolutely necessary to take the Government thereof into our Hands, and into our immediate Care and Protection, and did, thereupon, by Letters Patent of 21st October in the 4th Year of our Reign constitute and appoint Benjamin Fletcher Esq; our Captain General and Governor in Chief in and over our said Province of Pensilvania and Country of Newcastle and all the Territories and Tracts of Land depending thereon in America, &c. And whereas humble Application has been made unto us, by our trusty and well beloved William Penn Esq; Proprietor of our said Province of Pensilvania, that he may be restored to the Administration of the Government thereof, as formerly, And whereas the said Proprietor has given us good Assurance that he will take care of the Government of our said Province and Territories, and provide for the Safety and Security thereof all that in him lies. We have thereupon thought fit to restore him to the Administration of the Government of our said Province and Territories; And accordingly our Will and Pleasure is that so much of our said Commission, bearing Date 21 October in the 4th Year of our Reign, as appointed Colonel Fletcher Governor of our said Province of Pensilvania, Country of Newcastle, and the Territories and Tracts of Land depending thereon in America, together with all the Powers, &c. thereby granted for the ruling and governing of our said Province and Country, do, from the Publication of these our Letters Patent, cease, determine and become void; And accordingly, the same are hereby declared void; Of which all Persons whom it may concern are to take notice

and govern themselves accordingly under Pain of our higher Displeasure. This is proved by Mr. Bulmer, and is Exhibit Rocha No. 8.

Note.

So that here the Crown layd no Claim to the Government of the Lower Counties, but restored the Government of the Territories to Mr. Penn, as formerly.

Sept. 5.

From the Sussex Records, an Indenture between William Clark of the County of Sussex annex unto the Province of Pennsylvania, Merchant, of the one Part, and Peter Waples of the aforesaid County of the other, reciting that Proprietary Penn's Commissioners did by their Patent of 7 September 1691, grant to the said William Clark a Tract of Land, on the South side of Indian River, in the said County of Sussex containing 400 Acres. Now for the Consideration of 4300 Pound of Tobacco Clark conveys the same to Waples, free of all Demands, the Rents and Services from henceforth to grow due to the Proprietor and Government only excepted. With an Endorsement signed by the Clerk of the Court that Clark acknowledged that Deed in open Court held at Lewis for the said County of Sussex upon 5 September 1694. Sussex Records, No. 17. Fol. 34.

1694, *March 6.*

At a County Court or Court of Common Pleas held in their Majesties Names at Lewis for the County of Sussex on the 6th and 7th Days of March 1694, before the Justices of the said Court, after several Proceedings there stands recorded thus, The Court caused a Letter to be written, to the Justices in Maryland, relating to some Difference between the two Governments; and ordered the Clerk to record the Letter, which follows there, and is to this Effect; We their Majesties Justices of the Peace, in Court sitting, are given to understand that John Barker and Charles Tindall, Inhabitants on the South side of Indian River, within this County and Government, stand bound over to your Quarter Sessions, for not owning the Authority of your Government, thought fit to signify to you that most of the Lands, on the said South side of the said Indian River, and particularly the Lands that they live upon, were taken up, and surveyed by Grant, when this Place was under the Government of New York, and since patented under William Penn Esq: absolute Proprietary; and that the said above-named Persons possess their said Lands by the said Right; and have, all along, paid Rents and Duties unto the said Proprietor and Government; And whereas some of your County have pretended something of an Order of King and Council, that the Tract of Land, lying between the

River and Bay of Delaware on the one side, and Chesapeake Bay on the other side, be divided in two equal Parts, by a Line, from the Latitude of Cape Inlopen, to the 40th Degree of Northern Latitude, and that one half thereof lying towards Chesapeake Bay remain to the Lord Baltimore, and that half Part lying towards the River and Bay of Delaware unto William Penn Esq; But, if any apprehend so, they are under a great Mistake, for, the Order of King and Council is, That, for avoiding further Differences, the Tract of Land lying between the River and Bay of Delaware and the Eastern Sea on the one part, and Chesapeake Bay on the other, be divided into equal Parts, by a line from the Latitude of Cape Henlopen to the 40th Degree of Northern Latitude, and that one half thereof, lying towards the River and Bay of Delaware and the Eastern Sea be adjudged to belong unto his Majesty, and that the other half remain to the Lord Baltimore as comprised within his Charter. Now, some of your Government have, also, alledged that Cape Henlopen, and Cape Inlopen, are one and the same Cape, which, likewise must be a great Error: for, if so, there had been no need for the King and Council to have mentioned the Eastern Sea in the said Order. All which, being duly deliberated, Quere, Whether it be not most fit to abstain all Acts of Violence, and Breach of good Neighbourhood, on either part, till such time as the Division be made and completed according thereto; which we believe will not be long. These things we have agreed to offer to your Consideration, and may conduce to the Relief of the said Barker and Tindall. Sussex Records, No. 17. Fol. 35. 36.

7 & 8^o Will. 3rd, 1696.

An Act of Parliament was past, for preventing Frauds and regulating Abuses in the Plantation Trade, which contained many new Regulations for the Plantations in divers Respects. By the 4th Clause, all Governors in the Plantations were to take an Oath to observe the Acts of Trade. By the 9th Clause, all Laws of the Plantations contrary to the Acts of Trade therein mentioned then in Being, or repugnant to the then present Act, or to any future Act which should relate to the Plantations, were declared null and void. By the 12th Clause Places of Trust in the Colonies were to be in the hands of native-born Subjects. By the 16th Clause Persons claiming a Right or Propriety in any Islands or Tracts of Land on the Continent of America by Charter or Letters Patent should not alien or sell the same other than to the natural born Subjects of England, Ireland, Wales, or Berwick upon Tweed, without Licence from the Crown by Order in Council. And by the latter Part of the same Clause. "All Governors nominated and appointed by

"any such Persons or Proprietors who shall be intituled to make
 "such Nomination, shall be allowed and approved of by his
 "Majesty, his Heirs and Successors as aforesaid, and shall take
 "the Oaths appointed by this or any other Act to be taken by
 "the Governors or Commanders in Chief in other his Majesty's
 "Colonies and Plantations, before their entering upon their re-
 "spective Governments, under the like Penalties as his Majesty's
 "Governors and Commanders in Chief are by the said Acts
 "liable to." Printed Act of Parliament 7 & 8 W. 3.

8th & 9th Will. 3d, 1696.

An Act of Parliament was past intituled, An Act for making
 good the Deficiency of several Funds, &c. and for enlarging
 the Capital Stock of the Bank of England, &c. By a Clause
 wherein, the foregoing Clause in the last Act of Parliament is
 recited, and that thereby all the then present Governors and
 Commanders in Chief of any English Colonies and Plantations
 were, before the 25th of March 1697, and all who should be made
 Governors, before their entring into their Government should
 take an Oath to observe the Acts of Trade therein mentioned.
 Now, further Time is given for administring that Oath, to
 the then present Governors, and such Oath was to be taken
 before such Persons as his Majesty should appoint. Printed
 Act of Parliament 8. & 9. W. 3.

9^o Will. 3th. 1697. Apr. 30.

A Commission under the Great Seal of England entred upon
 the Records of Pensilvania directed to Edward Randolph,
 Robert Quarry, Richard Holliwell, Edward Chilton, John
 Moor and Jasper Yeates, Esquires or any 5 of the Members of
 the Council, and the Collector of our Customs for the time
 being, within our Province of Pensilvania, reciting the said
 Clause in the Act of the 8th and 9th of King William. And
 reciting that the Persons appointed to administer the said Oath
 were by some Accidents prevented from performing the same
 within the Time limited by the said Act; To the end the good
 Intent of the said Act might not be disappointed for want of
 time to put the same in Execution. it had been enacted that
 further Time should be allowed for administring the said Oath,
 the King therefore appoints and authorizes the said Persons,
 or any 3 or more of them, to administer the Oath thereunto
 annex, unto the Governor or Commander in Chief of the said
 Province of Pensilvania. Pensilvania Records, No. 7. Fol. 4.
 March 17.

From the Pensilvania Records Copy of an Entry of an En-
 dorsement on the said Commission, that by vertue of those Let-
 ters Patent, William Markham Esq; Governor under William

Penn Esq; absolute Proprietor of the said Province and Territory thereunto belonging, made Oath as was therein directed, signed by 4 of the Commissioners. Pensilvania Records, No. 7. Fol. 6.

1698, *May* 27.

From the Pensilvania Records, Copy of an Entry of another Endorsement on the said Commission, that William Markham, Lieutenant Governor of the said Province (by vertue of a late Commission, granted to him by William Penn, absolute Proprietor and Governor of the said Province and Territories thereunto belonging) took the Oath there within directed, in full Council, held at Philadelphia; because a Quorum of the Commissioners (expresly) named in that Commission could not be got together at that time. Pensilvania Records, No. 7. Fol. 6.

Note.

In such Case the Commission was directed to the Members of the Council.

1700, *Sept.* 13.

From the Pensilvania Records an Indian Deed, whereby Widaagh alias Orytaah, and Andaggy-junkquogh, Kings or Sachemas of the Susquehannagh Indians, and of the River under that Name, and Lands lying on both sides thereof, do declare that, in Consideration of a Parcel of Indian Goods, to them given by their Friend and Brother William Penn, Proprietary and Governor of Pensilvania, and also in Consideration of the former much greater Costs and Charges the said William Penn had been at in treating about and purchasing the same, did give, grant and confirm unto the said William Penn,

All the said River Susquehannagh, and all the Islands therein, and all the Lands scituate lying and being upon both sides of the said River and next adjoining to the same, extending to the utmost Confines of the Lands which are, or formerly were, the Right of the People or Nation called the Susquehannagh Indians, or by what Name soever they were called or known; and also all Lakes, Rivers, Rivulets, Fountains, Streams, Trees, Woods, Underwoods, Mines Royal and other Mines, Minerals, Quarries, &c. and other Royalties, Privileges and Powers, whatsoever, to them or any of them belonging, or by them enjoyed, as fully and amply in all respects as they, or any of their Ancestors, had or could have held and enjoyed. And all the Right, Title, Interest, Possession, Claim and Demand of them, or the said Nation, or any in Right of the same.

And do hereby ratify and confirm unto the said William Penn the Bargain and Sale of the said Land, made unto Colonel

Thomas Dongan, now Earl of Limerick, and formerly Governor of New York, whose Deed of Sale to the said Governor Penn. we have seen. To hold the said River, Lands and Premises to Mr. Penn in Fee. *Pensylvania Records, No. 7. Fol. 6.*

1701, *Apr. 23.*

From the *Pensylvania Records*, Copy of Articles of Agreement between William Penn, Proprietor and Governor of the Province of Pensilvania and Territories thereunto belonging, on the one Part. and Connoodaghtoh, King of the Indians inhabiting upon and about the River Susquehannah in the said Province, and Widaagh alias Orettyah, Koqueesh, and Andaggy Junkquagh, Chiefs of the said Nations of Indians, and Wopaththa, King. Lemoyeungh and Pemoyajooagh, Chiefs of the Nations of the Shawonnagh Indians, and Abookassoongh, Brother to the Emperor, for and in behalf of the Emperor, and Wewhinjouh, Cheequittah, Jakyewsan, and Woopaekoa, Chiefs of the Nations of the Indians inhabiting in and about the Northern Part of the River Pottomock in the said Province, for and in behalf of themselves and Successors, and their several Nations and People, on the other Part. That as there always had been a good Understanding and Neighbourhood, between Mr. Penn and his Lieutenants, ever since his first Arrival in that Province, and the several Nations of Indians inhabiting in and about the same, so it agrees that there should be, for ever, a firm and lasting Peace continued between them, and they should live as one Head and one Heart, in true Friendship and Amity, as one People. And many particular Clauses there are therein, for doing Justice to each other, and that the Indians, whilst they lived near or among the Christian Inhabitants, should observe the Laws of the Government, and have the Privileges thereof, as any other Inhabitants. They acknowledging the Authority of the Crown of England, and Government of that Province; and several Clauses about Trade. And the Indians of Conestogo ratify the Indian Sale made to Mr. Penn the 13th of September last. *Pensylvania Records, No. 7. Fol. 7.*

Now Mr. Penn came over from Pensilvania and appointed a new Lieutenant Governor, for the first time, after the Act of Parliament of the 7th and 8th of King William had been made. But from 1682, to this Time Mr. Penn had governed the Lower Counties by himself and his Deputies without signing any Declaration to the Crown.

1702, *Nov. 11.*

The Board of Trade made a Representation to the Queen in Council, that they had, in Obedience to the Queen's Commands, signified to them by Secretary Hedges, upon the Petition of Mr.

Penn, that Colonel Andrew Hamilton, appointed by him to be Deputy or Lieutenant Governor of Pensilvania, might have her Majesty's Approbation for the executing of that Trust, for one Year only, lately represented to her Majesty, before, that, having been informed the said Hamilton had been a Favourer of illegal Trade with Scotland and other Parts, they did not think it for the Queen's Service that he should receive the Queen's Royal Approbation as Lieutenant Governor of that Province. But the Queen having, now, signified to them her gracious Inclination to gratify Mr. Penn in his present Request, and considering the absolute Necessity which he alledges for a temporary Approbation of the said Hamilton, their Lordships humbly offer that Security be given to her Majesty in 2000*l.* at least, by Mr. Penn, or other Persons, for Hamilton's duly observing the Acts of Trade, &c. as is usually done for the Proprietary Governments; "provided always that your Majesty's "Favour herein be not construed or extended in any manner to diminish or set aside your Majesty's Right and Title to the three lower Counties upon Delaware River adjoining to Pensilvania [Note these last Words are more softened upon future Approbation]; And their Lordships take this occasion to pray the Queen's Order to Mr. Penn that he be obliged to return a speedy Answer in Writing to four Queries which they had delivered to him in May last, which much imported the Good of the Trade and Settlement of those and the neighbouring Parts. Co. Off. No. 5.

Same Day.

The Queen's Order in Council, stating that Representation verbatim, and approving the same, and declaring her Majesty's Allowance of the said Andrew Hamilton to be Deputy Governor for the said William Penn, of her Majesty's Province of Pensilvania, and Territories thereunto annex, for one Year only; provided that the usual Security be first given as aforesaid that Hamilton shall duly observe the Acts for better regulating the Plantation Trade, and obey such Instructions, relating thereunto, as he shall receive from her Majesty, or any acting under her Authority; And provided also that the said William Penn do forthwith return to the Lords of Trade an Answer to the said four Queries; And do further declare, under his Hand, that her Majesty's said Allowance shall not be construed in any manner to diminish or set aside her Majesty's Right and Title to the three Lower Counties upon Delaware River; And the Lords of Trade are to take care that good and sufficient Security be given to her Majesty as aforesaid. Co. Off. No. 5.

Jan. 21.

Another Representation from the Lords of Trade to the Queen in Council. That pursuant to the last Order they had required from Mr. Penn the several previous Conditions which were therein exprest, and having received from him a Certificate of Security, given in her Majesty's Remembrancer's Office, for 2000*l.* for Hamilton's observing the Acts of Trade, in the same Form as had been done for other Proprietary Governments. As likewise a Declaration and Promise under Mr. Penn's Hand, that the Queen's Royal Approbation and Allowance of the said Hamilton to be Deputy Governor of the said Province and Territories should not be construed in any manner, to diminish or set aside her Majesty's Claim of Right to the said three lower Counties upon Delaware; and also his Answer to the four Queries: and that their Lordships were, then, considering, (upon the said Queries and Answer) the ascertaining of one current Rate or Value of Coin in the Plantations on the Continent of America, also, the Pretentions and Claim of Mr. Penn to the Power of Government in the three lower Counties; and, in the mean time, they conceived it absolutely necessary for her Majesty's Service in those Parts, and agreeable to the Charter granted to Mr. Penn, that all Persons in Judicial, or any other Offices in Pensilvania and the said Lower Counties, should be obliged to take the Oath or Affirmation directed by the Law of England; and that no Judge should be allowed to sit on the Bench, who should not first take the Oath or Affirmation of a Judge, as directed by the Law of England, and that all Persons who in England are obliged, and are willing, to take an Oath in any publick or judicial Proceeding, be admitted so to do by the proper Officers and Judges in Pensilvania and the said Counties, and in default thereof, or in case the said Judges refuse to administer the same, that their Proceedings be declared void and null; and that the Queen's Pleasure herein should be signified to Mr. Penn, and to the several Judges of her Majesty's Courts within those Territories; and, considering the Uncertainty of the Voyage to Pensilvania, they further proposed that the Queen's Approbation of the said Hamilton to be Deputy Governor of that Province should be extended to the 1st of May 1704, and no longer. Co. Off. No. 6.

Same Day.

The Queen's Order in Council stating the said Representation verbatim, approving of what was proposed thereby, and, accordingly ordering, that all Persons, in Judicial, or any other, Office, in Pensilvania and the said Lower Counties, before their entering on the same, should take the Oath directed by the Law

of England, or the Affirmation: and that no Judge should be allowed to sit on the Bench, who should not first take the Oath of a Judge, or the Affirmation in lieu thereof; and that all Persons should be admitted to take an Oath by the proper Officers and Judges in Pensilvania and the said lower Counties; in Default of which their Proceedings are hereby declared null and void; and the said William Penn, and the several Judges of her Majesty's Courts within the said Province and Territories, and all others whom it may concern, are to take notice hereof and govern themselves accordingly. And her Majesty being pleased to extend her Allowance and Approbation of Andrew Hamilton Esq; to be Deputy Governor, for the said William Penn, of the said Province of Pensilvania, and the said Territories adjacent, to the said 1st of May 1704, and no longer, Her Majesty is graciously pleased hereby to declare her Royal Approbation and Allowance of the said Andrew Hamilton to be Deputy Governor accordingly. Co. Off. No. 6 But Hamilton presently afterwards died.

Note.

Several of our Witnesses who have been examined in the Cause, say that they have not only seen many Dutch, but some Swedish Maps also, wherein both Capes, viz. Cape Cornelius, and Cape Hinlopen, were laid down exactly as they were in my Lord Baltimore's Map, by which the present Agreement was framed. And indeed, while the Swedes were in Possession, that Part now called Pensilvania and the lower Counties, was called New Sweedland;

Now we have a Swedish Book, printed in this Year 1702, which treats of New Sweden, now called Pensilvania, and was writ by Thomas Campanius Holm, wherein there is such a Map (at Fol. 27.) with both the Capes so to it. History of New Sweden in Quarto.

But it is submitted to your Consideration whether we can, or should produce it, on the two following Considerations, (and especially as we are strong enough without it.)

1. No Witness has spoke to this identical Map, as a particular Exhibit, tho' they say, in general, that they have seen Swedish Maps.

2. This Book was printed but in 1702, since the Grant of Pensilvania; and if we produce modern Maps, it may let the Defendant in to do so also.

Whereas, if we confine ourselves to such Maps as are proved in the Cause, and to such old Maps as were antecedent to the Year 1680, nothing can hurt us, but, if we let in all Sorts of Maps, we shall have modern Maps trump upon us by the De-

fendant, such as have been made since the Names of the Capes have been altered, and we shall not be able to shew (as Maps commonly have no Dates) whether they are ancient Maps or modern ones.

Only thus, all the Maps which name Pensilvania must have been made since 1680.

However, if new Maps, tho' not proved in the Cause, should be let in against us, in that Case, this foreign Map is the strongest Evidence for us; especially as our Proofs say the Witnesses have seen Swedish Maps, which by their Account of them must be either this, or some such as this.

1703, *July 11.*

The Queen's Order in Council, made upon reading a Representation from the Lords of Trade, dated the 9th Instant, upon the Petition of Mr. Penn, that John Evans may have her Majesty's Approbation to be Deputy Governor of Pensilvania, and annex Territories, in the place of Andrew Hamilton deceased, and their Lordships having received a good Character of the said Evans, they have no Objection against her Majesty's Approbation of him accordingly; Her Majesty in Council approving the same. Declares her Royal Allowance and Approbation of the said John Evans to be Deputy Governor, for the said Mr. Penn, of the said Province of Pensilvania, and the annex Territories, as soon as Security shall be given for his observing the Acts of Trade and otherwise, as in the like Cases; and that Mr. Penn do renew the Declaration made by him, relating to her Majesty's Right to the three Lower Counties; and the Lords of Trade are to take care that the said Security be forthwith given, and the Declaration made, accordingly. Co. Off. No. 7.

July 22.

A Representation from the Lords of Trade to the Queen in Council, That they had required from Mr. Penn the Performance of the Conditions express in the last Order; and had accordingly received from him a Certificate of Security given in the Exchequer for 2000*l.* that the said Evans should duly observe the Acts of Trade, in the same Form as had been done for other Proprietary Governments; as likewise a Declaration and Promise, under Mr. Penn's Hand, that her Majesty's Approbation and Allowance of the said Evans to be Deputy Governor of the said Province and Territories should not be construed in any manner to diminish or set aside her Majesty's Claim of Right to the 3 lower Counties on Delaware River; whereupon, their Lordships are of Opinion that her Majesty do grant her Royal Approbation of the said Evans to be Deputy Governor of Pen-

silvania, without Limitation of Time, and of the 3 lower Counties during her Majesty's Pleasure only; and their Lordships lay before the Queen a Draught of Instructions, for Mr. Penn, relating to the Acts of Trade, to the like Effect as have been given to him, and all other Proprietors of Plantations, upon the like Occasion. Co. Off. No. 8.

July 30.

The Queen's Order in Council, stating that last Representation verbatim, and declaring her Royal Approbation, of the said Evans to be Deputy Governor of Pensilvania without Limitation of Time, and of the three lower Counties on Delaware River during her Majesty's Pleasure only. Co. Off. No. 8.

We see that, not only the Proprietor and People of Pensilvania, in their publick Acts, but also private Persons (and some of Maryland also) in their private Deeds and Transactions, call'd the Three Lower Counties, the Territories annexed to the Province of Pensilvania; we also have seen the publick and general Acts of Assembly, so annexing and uniting the said Province and Counties. We see the Crown, itself, in many of its Commissions, under the Great Seal, and other publick Acts, Orders of Council and Instruments, calls them the Territories annex to that Province, yet, the Defendant in his present Answer, Fol. 13. 14. 15. has the Hardiness to deny that they were ever so called by any but Mr. Penn and his Dependants only; whereas in his own Province he and his Ancestors past many old publick Acts of Assembly expressly calling them so, and tho' those old Maryland Acts are now repealed and gone, yet we shall find in 1704, in 1707, in 1715, and in 1724. Sundry Maryland Acts of Assembly, declaring them to be annex to Pensilvania, and also considering, and taxing them, as a distinct Government from Maryland, some of which Maryland Acts (viz. those in 1704.) we now come to, and the residue of them will be stated afterwards, according to their order of time.

1704, *Sept. 30.*

A Maryland Act of Assembly, Repealing all former Acts of Assembly, made or enacted at any Time before the 26 April 1704, except two particular Acts therein specified, and except such as shall in this present Sessions be revived. Maryland Stat. Book, Fol. 44.

Same Day.

Another Maryland Act of Assembly for laying an Imposition on several Commodities exported out of this Province. It lays a Duty on several Sorts of Skins exported out of that Province

by Persons inhabiting or residing within the Province of Maryland, and laying, on the Exportation thereof by Non-Residents, double the Duties appointed to be paid by Persons inhabiting or residing within the Province. It also lays a Duty on Pork, Beef or Bacon exported out of that Province by Persons not being Inhabitants of that Province, and the Non-Residents exporting the same without Certificate of the Duty paid, to forfeit the same. And, for the better understanding what Persons shall be adjudged Non-Residents, it enacts that all Persons, trading to and from that Province, shall be adjudged Non-Residents, not having a seated Plantation of 50 Acres in which they shall have resided for a whole Year, and that within 12 Months before they claim any Benefit by this Act, or that have a House, of such a Dimension, in some Port or Town, as his Freehold, wherein he shall have resided for a whole Year as aforesaid. And that no such Person, trading to and from this Province, having Houses in any Town or Port within the same, whereby they may claim any Benefit or Freedom in this Act given to the Inhabitants thereof, shall enjoy any such Benefit or Privilege longer than they, in such Port or Town, shall actually inhabit and reside. Maryland Stat. Book, Fol. 29.

Now if the lower Counties were Part of Maryland, the Inhabitants there would be free by this Act, but we shall, in evidence, find that the Inhabitants, in the lower Counties, are considered as liable to pay these double Duties, (when they trade out of Maryland) as being Non-Residents in Maryland. And we have yet much clearer Instances than this.

1704, *Sept.* 30.

Another Maryland Act of Assembly confirming to the Governor of this Province the Duty of 3d. per Ton upon the Burthen of Ships and Vessels. Lays that Duty upon all Ships and Vessels trading and coming into that Province, except such Ships and Vessels as are bona fide built in, or belong to the People of this Province. Maryland Stat. Book, Fol. 44.

This Duty we shall find in Evidence, demanded of Ships belonging to the Lower Counties; ergo, they are not in the Province of Maryland.

1707, *Apr.* 15.

Another Maryland Act of Assembly for preventing the Exportation of Tobacco out of this Province by Land, before the Duties be paid or secured. Recites that it has been a Practice, by Merchants and other Inhabitants, as well of this Province, as of the Province of Pensilvania, and the Territories thereunto belonging, to export by Land, from the upper Parts of this Province, into Pensilvania and the Territories thereof, Tobacco,

without paying or securing the Duty, to the Prejudice of the Trade of this Province. It enacts that all Persons who have Tobaccos in the upper Parts of this Province, and who shall permit the same to be carried out of their Houses in order to be rolled or carried over Land, into the Province of Pensilvania, or Territories thereunto belonging, without a Certificate of the Duties paid, shall forfeit 10*l*. Sterling per Hogshead. Maryland Stat. Book, Fol. 49.

This answers in both Points. 1. It shews that there are Territories belonging to Pensilvania; and 2. That they are out of the Province of Maryland, and we shall find, in Evidence, this Act enforced against People of the lower Counties.

1703, *June 2.*

A Report from the Lords of Trade to the Queen in Council, made in Obedience to an Order of Reference of the 20th of May upon the Petition of William Penn Esq; praying that Captain Charles Gookin may have the Queen's Approbation to be Deputy Governor of Pensilvania in the place of John Evans Esq; whereby their Lordships represent to the Queen that having received a good Character of the said Gookin from Lieutenant General Erle, in whose Regiment he had served many Years, they had no Objection against her Majesty's Approbation of him accordingly, Security being first given for his observing the Acts of Trade and Navigation as in like Cases, and that Mr. Penn do renew the Declaration made by him relating to her Majesty's Right to the three Lower Counties. Co. Off. No. 9.

June 26.

The Queen's Order in Council, stating that Report verbatim, Her Majesty in her Privy Council approving the same, is pleased to declare her Royal Allowance and Approbation of the said Charles Gookin to be Deputy Governor of the said Province of Pensilvania, in the place of the said John Evans, as soon as Security shall be given for the said Gookin's observing the Acts of Trade and otherwise, as in the like Cases has been usual; and that Mr. Penn do renew the Declaration made by him relating to her Majesty's Right to the 3 Lower Counties; and the Lords of Trade are to take Care that the said Security be forthwith given, and the Declaration made accordingly. Co. Off. No. 9.

July 8.

A Representation from the Lords of Trade to the Queen in Council, that, in obedience to the last Order relating to the Queen's Royal Approbation of Gookin to be Deputy Governor of Pensilvania, and annex Territories, they have required, from Mr. Penn, the Performance of the conditions therein exprest,

and having received from him a Certificate of Security given in the Exchequer for 2000*l.* that the said Gookin shall observe the Acts of Trade, in the same Form as has been done for other Proprietary-Governments; as likewise, a Declaration and Promise, under Mr. Penn's Hand, that the Queen's Approbation and Allowance of the said Gookin to be Deputy-Governor of the said Province and Territorys, shall not be construed in any manner to diminish or set aside her Majesty's Claim of Right to the 3 Lower Counties on Delaware River, they are of opinion that her Majesty do grant her Royal Approbation of the said Gookin to be Deputy-Governor of Pensilvania, without Limitation of Time, and of the 3 Lower Counties during your Majesty's Pleasure only; and we lay before your Majesty a Draught of Instructions, for Mr. Penn, relating to the Acts of Trade, to the like Effect as have been given to him and all other Proprietors of Plantations upon the like Occasion. Co. Off. No. 10.

July 18.

The Queen's Order in Council, upon reading that Representation, which is inserted verbatim therein, declaring her Royal Approbation of the said Gookin to be Deputy-Governor of Pensilvania, without Limitation of Time, and of the three lower Counties on Delaware River during her Majesty's Pleasure only. Co. Off. No. 10.

NOTE—This last Report and Order are also entred in Newcastle Records, No. 11. Fol. 96.

Sept. 3.

From Newcastle Records, the Inrolment of the Commission granted by Mr. Penn, as true and absolute Proprietary and Governor in Chief of the Province of Pensilvania and Counties of Newcastle, Kent and Sussex, lying on Delaware and the Eastern Sea, which shortly recites the Patent for Pensilvania, and the Duke of York's Possession and Deeds to Mr. Penn for the three lower Counties, and appoints Colonel Charles Gookin to be Deputy or Lieutenant-Governor of the said Province and Counties. Dated in the 20th Year of Mr. Penn's Government. Newcastle Records, No. 11. Fol. 95.

Oct. 6, 7.

Original Indentures of Lease and Release, whereby, in consideration of 3100*l.* paid by Henry Gouldney, Joshua Gee, Silvanus Grove and John Woods, 1000*l.* by Thomas Callowhill, 1500*l.* by Thomas Callowhill, Thomas Oade and Jeffery Pennell, and 1000*l.* by John Field and Thomas Cuppage (making in all 6600*l.*) The said William Penn the Patentee, and William Penn Esq; then his Son and Heir apparent, mortgaged unto the said Henry Gouldney, Joshua Gee, and others, the Province of Pen-

sylvania, and all Franchises, Powers, and Territories thereunto belonging, and all Rents Issues and Profits, and the said Town of Newcastle, and the Tract of Land within the Compass or Circle of 12 Miles about the same; and all Islands in the River Delaware, and the said River and Soil thereof, with all Rents, Franchises and Jurisdictions thereto belonging; and all that Tract of Land upon Delaware River and Bay, beginning 12 Miles South of the Town of Newcastle, and extending South to the Whorekills, otherwise called Capin Lopen; and all Royalties, Franchises and Rents thereto belonging; to hold unto the said Henry Gouldney, Joshua Gee, and others the said Mortgagees in Fee, Provide for Redemption on Repayment of the 6600*l.* and Interest, at 5 per Cent. on the 8th of October 1710. Original Indentures of Mortgage proved in the Cause by Mr. Page.

NOTE—It will appear in Evidence how great Distress Mr. Penn was under at this time, wherefore, this was thought a proper Season for that very Lord Baltimore, with whom he had had the former Contest, and so very many Hearings in the Years 83, 84, and 85, to make a second Attempt against Mr. Penn.

Jan. 9.

The Lord Baltimore by his Petition to the Queen in Council suggested, that King Charles the Second, by a Letter dated the second of April 1681, taking notice of a Grant made to Mr. Penn of Pensilvania, did command the Petitioner and the said Penn to join in making a true Division and Separation of the Provinces of Maryland and Pensilvania, according to the Degree of Northern Latitude: which Letter was sent to the Petitioner, by Captain Markham, together with a Letter from the said William Penn, pressing the Petitioner to a speedy Compliance with his Majesty's Commands; To which the Petitioner was then, and had been ever, ready to submit, as by the said Letter thereto annex might appear. That the said Penn having, by his Agents, taken private Observations of the Degrees, and being informed that the 40th Degree Northerly would not give him a Port at the Head of the Bay Chesopeak, surreptitiously procured a second Letter, dated 19 August 1682, which having no relation to the Bounds of either Province, being obtained by Misrepresentation, was by the said Penn laid aside. And thereon the said Penn make an offer to the Petitioner, that if the Petitioner would allow him a convenient Port at the Head of the said Bay of Chesopeak at reasonable and gentle Rates, he then would, in obedience to the King's first Letter, join with the Petitioner to take an Observation at the Head of the said Bay, in order to fix the 40 Degrees of Northerly Latitude, being the Northern Bounds of Maryland, and South-

ern Bounds of Pensilvania; and that, on no other Terms, he would comply with, or obey, the King's Letter of 2 April 1681. That on 7 November 1685, the said Penn. falsely suggesting that the Petitioner by his Grant from the Queen's Grandfather, was to have no land but what was cultivated by Savages, (tho' the said Suggestion was directly contrary to the Words and Intent of the Petitioner's Grant) obtain'd an Order of Council, for dividing an Isthmus of Land, lying between the River and Bay of Delaware and the Eastern Sea, on the one Side, and Chesopeak Bay on the other; and thereby has endeavoured without your Petitioner's being ever heard to, or having notice of such Order, to deprive your Petitioner of his Inheritance granted to him by the Bounty of the Queen's Grandfather. Therefore, prays that the said order thus surreptitiously gotten, may be set aside, and that the Boundaries of the said two Provinces may be ascertained pursuant to the King's Letter of 2 April 1681. Co. Off. No 11.

King Charles the 2d's Letter to Lord Baltimore of 2 April 1681, (according to the Copy annex to the foregoing Petition) recited the Grant of Pensilvania, just then made to Mr. Penn. and recommended him, and his Deputies and Officers, to the friendly Aid and Assistance of the Lord Baltimore, willing and requiring Lord Baltimore, to do him all the Offices of good Neighbourhood which might tend to the mutual Benefit of the King's Subjects within the Provinces under their respective Proprieties; and moreover the King thought fit that, in order thereto, Lord Baltimore should appoint, with all convenient speed, some Persons, who might, in Conjunction with the said William Penn. make a true Division and Separation of the said Provinces of Maryland and Pensilvania, according to the Bounds and Degrees of Northern Latitude express in the said Letters Patent, by settling and fixing certain Land-marks, where they should appear to border upon each other, for the preventing and avoiding all Doubts and Controversies that might otherwise happen concerning the same. Co. Off. No 11.

The Letter, supposed to have been writ by Mr. Penn to Lord Baltimore, according to the Copy annex to that Petition, was dated 10 April 1682, and was a very civil, but general Letter, containing nothing in particular or material. Co. Off. No 11.

Jan. 9.

The Queen's Order in Council, made upon reading the Lord Baltimore's Petition, whereby it was ordered that the said Petition should be referred to the Lords of Trade, to examine the Allegations thereof, and report what they conceived her Majesty might fitly do therein. Co. Off. No 12.

Jan. 27.

Hereupon, in a very few days, Mr. Penn petitioned the Queen in Council, setting forth that, in 1683, Lord Baltimore complained to King Charles the 2d in Council that Mr. Penn had invaded that Lord's Boundary in Maryland; and, praying Redress therein, obtained a Summons for the now Petitioner, who was then in Pensilvania laying the Foundation of that now growing Colony. That the now Petitioner, in Obedience to such Summons, upon the first Notice of it, returned into England, to the vast Prejudice of his Interest in America; and in regard both the Lord Baltimore and himself were Grantees under the Crown, the now Petitioner joined with the said Lord in submitting their Boundaries to the Decision of the King as their Supreme Landlord. That the King referred the same to the Lords Committee for Trade and Plantations (then consisting of the whole Privy Council) who, after several Hearings of the Lord Baltimore and the Petitioner, and of their respective Council and Advocates, in the Years 84 and 85, and long Deliberation had of the Allegations and Proofs produced before them, reported their Opinious thereon, and how the said Boundaries should be settled; which Report was in November 1685, approved of and confirmed, by an Order of the King in Council. That the Petitioner, not doubting but that the Lord Baltimore would acquiesce under the Royal Determination, which himself had desired, the Petitioner and his Tenants have, ever since, improved the disputed Lands which were allotted to the Petitioner. But, to his great Surprize, after 23 Years quiet Possession under that Sentence, the Lord Baltimore has lately petitioned the Queen to set aside the King's Order in Council, which was intended to be final, which Petition the Queen has referred to the present Lords Commissioners for Trade and Plantations. The said boundaries having been solemnly settled, by a Judge of Lord Baltimore's own chusing, after the most deliberate and nice Enquiry into the Merits of his Complaint, and having been accordingly enjoyed so many Years—Mr. Penn prayed that the Queen would not countenance an Attempt so injurious to Property and the Rights of her subjects, but would order the Lord Baltimore's Petition to be dismiss. Co. Off. No 13.

Jan. 27.

By the Queen's Order in Council made upon reading Mr. Penn's Petition, and taking it into her Consideration, Ordered that the Lord Baltimore's said Petition should be dismiss: and that the Lords of Trade, to whom that Petition had been by Order of the 9th Instant referred, should not proceed to examine into the Allegations thereof, as by that Order had been directed. Co. Off. No 14.

And so Lord Baltimore's second Application was dismiss.

CHAP. IX. *From the second Determination in the Plaintiffs Favour, in January 1708, to the third Determination in their Favour, on 23 June 1709.*

1709, Apr. 15.

Mr. Penn petitioned Queen Anne in Council that, since both Provinces of Maryland and Pensilvania had long desired the Settlement of their respective Boundaries, and that this Petitioner had done his Endeavour to perform the same, and that, in pursuance of divers Orders from the Lords of Trade thereunto annext, sent, both to the Lord Baltimore and the Petitioner; which meeting with a Disappointment on Lord Baltimore's side, his Agents refusing the Petitioner when upon the Spot, alledging they had no Instructions from their Lord for that purpose, The Petitioner prays the Queen to direct the respective Officers of both Proprietaries to pursue the said Orders and former Instructions thereupon granted after many deliberate Hearings in the Years 83, 84, and 85. Co. Off. No. 15.

Surely Mr. Penn thought the Order in 85. related to him, and was in his favour, (though said to remain to his Majesty) otherwise, he would not have tried to enforce it thus.

Apr. 16.

The Queen, by Order in Council, upon reading this Petition, referred the Consideration thereof to the Lords of Trade to state the Matter of Fact according to former Proceedings, and to report to her Majesty what fit to be done thereupon. Co. Off. No. 15.

But Lord Baltimore, then, was afraid of this Order of 1685, and tried every way to get rid of it.

May 19.

Lord Baltimore presented another Petition to the Queen in Council. Says he petitioned her Majesty 9. January last to be relieved against the Order of Council of 7. November 1685. obtained on false Suggestions by Mr. Penn Proprietor of Pensilvania, whereby an Isthmus of Land in Maryland was ordered to be divided, and one Moyety was adjudged to belong to the Crown and the other Moyety to the Petitioner. That the Order, so obtained, depriving the Petitioner of his Inheritance, without being ever heard by himself or Council, he did by his said former Petition, pray her Majesty to set it aside, and that the Boundaries might be settled pursuant to King Charles's Letter of 2. April 1681. That the Petitioner hoped her majesty would have heard that Matter, before herself in Council, that

thereby he might have made out his Right to the said Isthmus, and have proved the Artifices Mr. Penn had used to deprive him of his Property; but the Queen having referred his said former Petition to the Lords of Trade, he cheerfully submitted thereto, and prepared to verify his Petition and make out his Right before them. That Mr. Penn, knowing his Pretensions would not bear a Scrutiny before any Judicature, had lately petitioned the Queen, suggesting that the said Order of 7. November 1685 was obtained after several Hearings of the now Petitioner his Council and Advocates; whereas the Petitioner can fully prove that he had no notice of the said Order, and that the same was not insisted on or notified to the Petitioner, by the said William Penn till about two Months past; and by these and other Suggestions, which the Petitioner hopes to prove groundless and false, the said Penn has obtained an Order of Council of 27 January last, for dismissing the Petitioner's Order of Reference to the Lords of Trade, and his Petition also—whereby the Petitioner is wholly destitute of Means to assert his Property and prove his Right to the said Isthmus. He therefore prays to be heard by his Council against the said Order of 7 November 1685. and that the Differences between the said Penn and the Petitioner, touching the Boundaries between the said Provinces of Maryland and Pensilvania, might be adjusted according to King Charles the 2d's Letter of 2 August 1681. Co. Off. No. 16.

So very bold an Assertion, so strongly affirmed and repeated did obtain a Hearing.

1709, *May* 19.

By Order in Council made upon reading this last Petition, her Majesty ordered that the Matter thereof should be heard before herself in Council, upon 9th June next, whereof all Parties concerned were to take notice, and come prepared to be heard with their Council learned at that time, accordingly. Co. Off. No. 17.

June 9.

Her Majesty in Council ordered that the Hearing of the Matter in Difference between Lord Baltimore and Mr. Penn, appointed for this Day, be put off to the 23d Instant, whereof the Parties concerned are to take notice, and come prepared to be heard, by their Council learned at that time. Co. Off. No. 18.

June 23.

An Order. Present the Queen in Council and also (amongst divers other Lords) the Lord Chancellor, the Lord Chief Justice Holt, the Master of the Rolls, and the Lord Chief Justice Trevor (every Law Lord of the Council). It recites the Lord Baltimore's Petition, and that it had been appointed to be

heard in Council. And accordingly, both Parties this Day, attending, and being fully heard, with their Council learned, "And it appearing, by authentick Copies of Proceedings at "this Board, that, as well the Petitioner, as the said Mr. Penn, "had been divers times heard, before the making of the said "Order, her Majesty, with the Advice of her Privy Council, is "pleased to order, that the Lord Baltimore's Petition be dismissed "this Board; and that the above mentioned Order of Council of 13 November 1685, be ratified and confirmed in all its Parts, and be put in Execution without any further Delay; whereof the Parties concerned are to take notice, and yield Obedience accordingly. Co. Off. No. 19.

So ended Lord Baltimore's third Application.

CHAP. X. *From June 1709. to the Time of the Death of Mr. Penn the Patentee in 1718.*

1715, Apr. 26.

An Act of Assembly past in Maryland, prohibiting the Importation of Bread, Beer, Flower, Malt, Wheat or other Indian or English Grain or Meal, Horses, Mares, Colts or Fillies, from Pensilvania and the Territories thereto belonging. It enacts that no Person shall import from the Province of Pensilvania, or the Territories thereto belonging, or from any other Plantation, Province or Colony in the Continent of America, into any Port of this Province, any Quantity of those goods, on pain of forfeiture. Maryland Stat. Book, Fol. 73.

Apr. 26.

Another Maryland Act of Assembly, laying an Imposition on Negroes and on several sorts of Liquors imported, &c.—Enacts that the Importers of Rum, Spirits, Wine and Brandy from Pensilvania and the Territories thereto belonging, by Land, shall pay a duty of 9d. per Gallon, to be collected by the Naval Officer of Cecil County, and shall bring the said Liquors into this Province to the Place called Bohemia Landing, and to no other Place, until the Duties be paid, on pain of Forfeiture. And, before such Liquors shall be water born in Chesapeak Bay, the Importer shall enter the same upon oath, with the Naval Officer of Cecil County District; and if any Importer after he has brought the same to Bohemia Landing shall put the said Liquors on board any Vessel in Chesapeak Bay before the Duty paid, the same shall be forfeited. Proviso that any Person importing the Liquors aforesaid from Pensilvania in Sloops, by Sea, through the Capes of Chesapeak into this Province, shall only pay the Duty of 3d. per Gallon, as others do.

It also lays a Duty of 20s. Sterling per Poll on all Irish Servants imported into Maryland by Land or Water, and the like upon Negroes. But no Ship built in this Province, whereof all the Owners shall be actual Residents of this Province, nor any Ship, English or Plantation built, purchased and held by Owners which are all Residents within this Province, shall be liable to pay any the Duty before mentioned. Maryland Statute Book, Fol. 157.

We shall see in Evidence by and by, that all these Duties were constantly exacted from Persons of the lower Counties; Ergo, they are of a distinct Colony, and not imagined, in Maryland itself, to be a Part of that Province, but, as the very Acts call them, Territories belonging to Pensilvania.

1716, *Nov.* 12.

An Order of the Prince (Regent) in Council, made upon a Report from the Lords of Trade, upon a Representation from William Penn, praying the Approbation of William Keith Esq; nominated by the said Proprietor to be Lieutenant Governor of that Province, And the Lords of Trade having no Objections to his being Deputy Governor, His Royal Highness declares his Allowance and Approbation of the said William Keith to be Deputy Governor of the said Province of Pensilvania, provided that the said Keith qualify himself for that Trust, in such manner as the Law requires, and that Security be given for his observing the Acts of Trade, and obeying such Instructions as shall be sent him from his Majesty; and provided that Mr. Penn renew the Declaration made by him relating to his Majesty's Right to the three lower Counties; and the Lords of Trade are to take care that such Security be given and such Declaration be renewed accordingly. Co. Off. No. 20.

Dec. 16.

A Representation from the Lords of Trade that they have required from Mr. Penn the Performance of the Conditions required by that Order, that they have had a Certificate of Security being given in the Exchequer for 2000*l.* to observe the Acts of trade, in the same Form as for other Proprietary Governments; as likewise a Declaration and Promise under Mr. Penn's Hand that the Approbation and Allowance of the said Keith to be Deputy Governor of the said Province and Territories shall not be construed in any manner to diminish or set aside his Majesty's Claim of Right to the three lower Counties on Delaware River. And therefore are of opinion his Highness should grant his Approbation of the said Keith to be Deputy Governor of Pensilvania without Limitation of Time, and of the three lower Counties during his Majesty's pleasure only. And

they lay before his Royal Highness a Draught of Instructions for Mr. Penn relating to the Acts of Trade, to the like Effect as has been given to him and all other Proprietors of Plantations on the like Occasion. Co. Off. No. 21.

Dec. 17.

By Order in Council, made on reading the said Report, the Royal Approbation of the said Keith to be Deputy Governor of Pensilvania without Limitation of Time, and of the three lower Counties on Delaware River during his Majesty's Pleasure only, is given. Co. Off. No. 21.

Dec. 29.

A Petition, presented to the King at Hanover, by the late Earl of Sutherland; Suggesting that there were considerable arrears due to him since the Revolution, amounting to above 20,000*l.* and he had shewn great Zeal and Activity for the Protestant Succession, both before and since his Majesty's Accession, and given singular Proofs of his Fidelity and Affection to his Majesty, by his Services in Scotland during the Rebellion there; wherefore, prays the King to grant him a Charter of certain Lands lying upon Delaware Bay in America, commonly called the Three lower Counties, which he is ready to prove do belong to the Crown. Botra No. 23.

Dec. 29.

A Reference thereon, dated at Hanover, and sign'd by Mr. Secretary Stanhope, whereby his Majesty referred the same to the Lords of Trade to consider thereof, and report their Opinion what was fit for his Majesty to do therein, whereupon the King would declare his further Pleasure. Botra, No. 23.

Dec. & Feb.

This Memorial was also referred to the Attorney General and to the Sollicitor General by the Secretary of State. Sec. Off.

1717, *Octob. 21.*

Mr. Attorney and Sollicitor General (Northey and Thompson) made a Report to the King, stating the beforementioned Petition. And that they had given notice of the same to the Persons concerned for William Penn Esq; and several Mortgagees and Purchasors under him, and also to the Lord Baltimore, who, severally, claim Title to the said lower Counties, being called Newcastle, Kent and Sussex. That they had heard them, and their Agents, thereupon. And they certify his Majesty that Mr. Penn is intituled to the Plantation of Pensilvania; but that these Counties are not included in such Grants, and his Title to Pensilvania was not then contested.

And as to the King's Title, which the Earl of Sutherland had undertaken to make out, to the said three lower Counties, he insisted that the same were gained by Conquest, by the Subjects of the King's Predecessors, or granted to the King's Predecessors by the Possessors thereof; and that, thereby, the King's Predecessors became intitled to the same; for that a Subject of the Crown could not make foreign Acquisitions by Conquest, but for the Benefit of the Crown and that the Length of Possession will be no Bar to the Crown. That, for several Years past, Mr. Penn had had the Possession of the said lower Counties, under a Pretence of a Grant thereof, to him made in 1682, by the Duke of York who then had the Possession of New York and of the said three lower Counties, but had no Right to the said lower Counties, and therefore could not transfer any Right in the same to Mr. Penn: which appears, for that the Duke of York, in 1683, obtained a Warrant, from King Charles the Second, to pass a Patent, whereby the said three lower Counties should have been granted to the Duke of York, and a Copy of a Bill, to pass into a Grant, in April 1683, to the said Duke of York, of the said three lower Counties, was produced by the Earl of Sutherland; who alledged the same was never past into a Grant; and that, if the same had past into a Grant, it would not have made Mr. Penn's Title to the said three lower Counties good, the Title of Mr. Penn under the Duke of York being precedent to the Title of the Duke of York; but that the same remained in the Duke of York, and is, consequently, now in the King: And that the King's Title further appears, for that after, in May 1683, when the Lord Baltimore by Petition opposed the passing the said Bill under the Great Seal, Mr. Penn, then, appeared against the Lord Baltimore as Agent for the Crown, and not on behalf of himself; and Mr. Penn, under his Hand, has declared that the King's Approbation and Allowance of the Deputy Governor of Pensilvania and the three lower Counties, named by him, shall not be construed to diminish or set aside the Right Claimed by the Crown to the said three lower Counties. Besides the Earl of Sutherland insists that, in the Grant of the Duke of York in 1682, to Mr. Penn, of the said three lower Counties, there is a Reservation of an Account to be made, of one Moyety of the Profits of the Lands thereby granted, touching which no Account has yet been rendered by Mr. Penn, and that, therefore, if the said Grants of 1682, were effectual, Mr. Penn is yet accountable to the King for the Moyety of all the Profits of the Lands, so granted, from the Year 1682 according to the said Reservation; and if the Earl cannot, by the King's

Favour, be intituled to the said three lower Counties, he prays he may have the Benefit of the said Account.

That, in Answer hereto, on behalf of Mr. Penn's Mortgagees and other Purchasors under him, it is alledged, that King James, when Duke of York, was seised in Fee of the said three lower Counties; and as one Argument, to prove such Seizing, they produced the Letters Patent dated 29 June, 26 Car. 2di. whereby King Charles granted to the Duke of York such and such Lands (which the Report enumerates verbatim); within the Descriptions of which Grant, it has been agreed by both Parties, that the said three lower Counties are not contained; but, on the behalf of Mr. Penn, &c. it has been insisted that, by the General Words, "Together with all the Lands, Islands, Soyles, Rivers, Harbours, &c. and all other Royalties, Profits, Commodities and Hereditaments to the said several Islands, Lands and Premises belonging and appertaining, with their "and every of their Appurtenances," the said three lower Counties did pass, as belonging to the Premises expressly granted by the said Letters Patent: for that the three lower Counties were enjoyed by the Duke of York, together with New York, which was granted by the said Letters Patent to the said Duke of York, till he granted the same to the said Penn in 1682, by the Grants herein after mentioned: which seems difficult to us to be maintained, since the Abuttal in the said Letters Patent exclude the three lower Counties; but they presume the late Duke of York might have some other Grants thereof, [so we find he had, of the three lower Counties expresly] which Mr. Penn might give an account, but cannot, being under a Lunacy.

We further certify that, by indenture dated 24th August 1682, the Duke of York bargained, sold and enfeoffed, to the said William Penn and his Heirs, the Town of Newcastle and Tract of Land about the same. &c. under the yearly Rent of 5s. with a Covenant for further Assurance, and appointed Attornies to deliver Seizin; and by another Indenture, dated the said 24th August 1682, bargained, sold and enfeoffed, to the said William Penn and his Heirs, the other Tract South from Newcastle, and extending South to the Whorekills alias Capin Lopen, &c. In which last Indenture there is Mr. Penn's Covenant to account and pay one Moyety of the Profits, with Power of Distress in case of Non-payment, and the Duke appointed Attornies to deliver Seizin of the last Premises also. That those Deeds were entred in the Office of Records for New York on 21 November 1682, within which said Grants the three lower Counties were contained; but the Covenant to account extends only to what is included in the last Grant.

The Report states, also, the Order, made by the Commander

in Chief and Council at New York on 21 November 1682, reciting the said two Indentures, and directing the several Magistrates to yield Obedience to the Powers thereby granted to Mr. Penn.

The Report, likewise, states an Affidavit, made by Thomas Grev, that he lived in Pensilvania from 1699 to 1707, and made out, and saw many Patents, or Grants and Warrants, whereby considerable Quantities of Lands, lying in the said three lower Counties, which as he deposes, are esteemed to belong to Pensilvania, were granted to divers Persons in Fee; some of which Grants or Warrants were signed by Mr. Penn, and the rest by his Agents or Commissioners, and all sealed with the Seal of the said Province; and that he has seen great Improvements, in Building and Planting, by Persons claiming under such Grants. That many of the said Inhabitants, who were reputed to have settled Lands in the lower Counties by Grants from the Swedes or Dutch, when the said Counties were in their hands respectively, or from the Governors of New York, under the late Duke of York, when the same was in his hands, did, upon making up their Accounts of Quit-Rents, due from them to the said William Penn for their Lands, except new Patents from the said William Penn or his Agents, and have since much increased their Improvements thereof, both in Building and Planting. That he has seen Patents, or Instruments, for conveying Lands, in the said Lower Counties, to divers of the ancient Inhabitants, as well from the Swedes or Dutch as the Governors of New York under the late Duke of York; as also Commissions under the Hands of some one of the said Governors of New York, constituting Magistrates and Officers in the said Lower Counties. That he believes the Patents of Lands in the said lower Counties, granted by the Governors of New York, were registered at New York; and that, if Search were made in the Secretary's Office there, the same would appear so to be. That he believes much the greatest Part of the Inhabitants of the Lower Counties who have Land there, hold the same by Title under Mr. Penn; and that several, who hold Land there by other Title, have delivered the same up, and accepted new Grants from Mr. Penn.

That it appears, by other Affidavits, that the Naval Store Company at Bristol have purchased of Mr. Penn 3120 Acres, in Kent County, and have already, in the Purchase, and by Improvements, expended 2000*l*. and are by Articles to lay out 3000*l*. more.

And as to the Objections that the Duke of York, in 1682, had no Title to the Lower Counties, and that therefore those Grants, then made to Mr. Penn, were void, which appears by

the Copy of the Bill dated 13 April 1683, in order to be past into a Grant to the Duke of York, and which is, after the Grant by the Duke to Mr. Penn, and which Bill recites a Surrender of certain Letters Patent dated 22d March then last (which Grant could not be, then, found) *On the behalf of Mr. Penn it was alledged, that it was probable the said Bill in 1683 might have past into a Grant, for they produced, from the Hanaper Office, where entries are made of Grants, that pass the Great Seal, an Entry of 16 April 1683, of a Grant to the Duke of York of the Town of Newcastle, such Entries not being made there but where Letters Patent do pass; which Patent might happen not to be inrolled (as it is not) by the Neglect of the Riding Clerk.

And as to the Objection that, if it were inrolled, the same is subsequent to the Grant to Mr. Penn, and that Mr. Penn appeared as Agent for the Crown against the Lord Baltimore, they insist that Mr. Penn, having a Grant then, so lately, from the Duke, might make use of the Duke's name, with his Leave, in Trust for Mr. Penn; which they rather apprehended, for that the Possession was always suffered to remain with Mr. Penn; and that, if the Grant was past, and was in Trust for Mr. Penn, it extinguishd the Covenant from Mr. Penn for accounting.

Besides, in the said last Grant to the Duke of York, it is recited that the Lands were formerly the Claim and Possession of the Dutch, and had been surrendered unto the Lieutenant Governor of the said Duke of York, and had, for several Years, been in his Possession, which might enable him to make the Grants in 1682, to the said Mr. Penn.

And, on behalf of the Purchasors, it has been insisted, that it would be very hard to put them to any Trouble, who have bought under the Title and Enjoyment of Mr. Penn, and have paid out great Sums of Money in improving their Purchases.

And as to the Title claimed by the Lord Baltimore, we are humbly of opinion that the same has already received a full and final Determination: for that, 31 May 1683, Richard Burk, Gent. Servant to Charles then Lord Baltimore, praying that the said Bill of 1683 might not pass the Great Seal, until his then Majesty should be satisfied of the Extent of the Letters Patent, formerly granted to Cecil Lord Baltimore, wherein the said Town and adjacent Country is alledged to be comprized; which said Petition being referred to the then Lords Commissioners for Trade and Plantations, on the 13th of November 1685, their Lordships made their Report, wherein they report, that having

*(but that Grant is now found)

examined the Matters, in Difference between the Lord Baltimore and William Penn Esq; on behalf of his then Majesty. concerning a Tract of Land called Delaware, they found the Land intended to be granted to Lord Baltimore, was only Lands uncultivated and inhabited by Savages, and that the Tract of Land then in Dispute, was inhabited and planted by Christians, at and before the Date of the Lord Baltimore's Patent, as it had ever since, to that Time, and continued as a distinct Colony from Maryland; so that their Lordships humbly offered their Opinion, that, for avoiding further Differences, the Tract of Land, lying between the River and the Eastern Sea on the one side, and Cheasapeak Bay on the other, be divided into equal Parts, by a Line from the Latitude of Cape Hinlopen to the 40th Degree of Northern Latitude, and that one half thereof, lying towards the Bay of Delaware and the Eastern Sea, be adjudged to belong to his Majesty. and the other half to Lord Baltimore: which Report his then Majesty was pleased to approve of, and to order the said Lands to be divided accordingly, and the Lord Baltimore and William Penn required to yield due Obedience thereunto: Which Report was also confirmed 23d June 1709, by her late Majesty Queen Anne in Council.

However, this Petition, on behalf of the Lord Baltimore, is a very great Argument that the Bill of 1683 to the late Duke of York, never passed the Great Seal, as on Mr. Penn's behalf is supposed, for that it being stopped, as must be presumed on that Petition or Grant, after that Matter settled, which was in 1685, in the Reign of the said Duke, when King of England, could not pass the Great Seal, in the Name of King Charles, to the Duke of York, then being King of England, but the Entry in the Hanaper Office might have been made when the Privy Seal was brought to the Great Seal, to be passed into a Grant.

On the whole matter, we humbly submit it to your Majesty's Consideration, whether it will not be reasonable that your Majesty's Title should be established by the Court of Chancery before any Grant should be made of the Premises; and if any Grant should be made, we most humbly submit it to your Majesty, whether the Claims of Purchasers or Grantees under Mr. Penn, who have improved that Part of the said three lower Counties, should not be established; But if Mr. Penn should have a Title to the three lower Counties by virtue of the two Grants made to him by the late King James in 1682, when Duke of York, we have not received any Answer why he should not account, according to his Covenant in the last of the said Deeds, for the Moiety of the Rents, Issues and Profits raised by virtue of that Grant.

All which is humbly submitted to your Majesty's Royal Wisdom.

Note.

The foregoing Report on Lord Sutherland's Petition in 1716. was so little in his favour that he took nothing by it. It is very long, as here stated, and contains many Matters whereof you have had an Account before. But there is a Use in stating it so fully, for you observe the Contents of it, and how fully and plainly the Objections to Mr. Penn's Title to the three lower Counties are therein stated; you also observe that Lord Baltimore was a Party to that Report (and the Opinion of the then Attorney and Solicitor General that he had no Title) Now, the Lord Baltimore, who was a Party thereto, is the very present Defendant, who, notwithstanding that, in one Part of his Answer to our Bill at Fol. 222, would have it be believed that the Plaintiffs imposed upon him in respect to their Title to the three lower Counties, which is impossible to have been true considering he was a Party to the foregoing Report, and so, contrary to Truth, and his own knowledge of the Truth; nay, indeed, he contradicts himself in his own long Answer, for it is but 14 Sheets before, viz: at Fol. 208, he swears he always knew and believed they had not a Title to the three Lower Counties, consequently they could not deceive him therein; Besides which, it will appear most manifestly, by and by, that it is of no manner of Consequence in the whole World, as to him, whether they really had, or had not, a Title to those Counties; since it is he that conveys those Counties to them, and not they to him.

1718.

Mr. Penn made a Will (about 1712) *sans* Date, and a Confirmation of it, dated 27 May 1712. By his Will taking notice, that his eldest Son was well provided for, by a settlement of his Mother's, and the Testator's Father's Estate: he devises the rest of his Estate in manner following: The Government of his Province of Pensilvania and Territories thereunto belonging he devised to the Earls of Oxford and Poulett, on Trust to dispose thereof to the Queen, or any other Person, to the best advantage they could, to be applied in such manner as he should therein after direct; and he gave to his wife Hannah Penn, and sundry others (to the Number of 12 Persons) all his Lands, Tenements and Hereditaments in Pensilvania and the Territories thereunto belonging, or elsewhere in America, upon Trust to sell sufficient to pay his debts, and after Payment to convey to each of his Son William's three Children, Springett, William, and Gulielma-Maria in Fee 10,000 Acres each. And (afterwards) 10,000 Acres more to the Testator's Daughter Letitia: And all the rest of his Lands, Tenements and Heredita-

ments in America to be conveyed by his said Trustees to and amongst his Children which he had by his then Wife, in such Proportions and for such Estates, as his said Wife should think fit, and made his said Wife sole Executrix. Original Will, to be produced from Doctors Commons, and to which we have examined one of the Witnesses, Thomas Pyle, in this present Cause.

July 30.

Mr. Penn, the Patentee, died; leaving a son William Penn Junior, and a Daughter Letitia by his first Wife; and leaving his second Wife Hannah Penn and four sons, the Plaintiffs John, Thomas and Richard Penn, and Dennis Penn (who is since deceased) and also a Daughter, Margaret Penn, by her.

CHAP. XI. *From the Death of William Penn Esq; the Proprietary, in 1718, to the Death of Mrs. Hannah Penn his Widow and Executrix, in 1726.*

1718, Nov. 14. 18.

Probate granted at Doctors Commons to Mrs. Hannah Penn the Widow and Executrix of the Will of her late Husband William Penn Esq; Original Probate under Seal. Original Deed Poll of Appointment, executed by Mrs. Hannah Penn, whereby she, in pursuance of the Powers vested in her by her late Husband's Will, directs and appoints all the rest and residue of the Testator's Lands, Tenements and Hereditaments in Pensilvania and the Territories thereunto belonging, or elsewhere in America, that should remain after the Provisions in the Will in manner following, viz. Three undivided sixth Parts of the Province of Pensilvania, and of all Lands and Profits, &c. therein, to be conveyed, by the Trustees, to and to the Use of, her eldest Son, the now Plaintiff John Penn in Fee, and the other three 6th Parts thereof, to and to the Use of her three other younger Children, Thomas and Richard Penn (now plaintiffs) and Dennis Penn (since dead) in Fee, as Joynt tenants. And as to the Lower Counties, and all Lands therein, or elsewhere in America, she in like manner directed and appointed the Trustees to convey three sixth Parts thereof to the said John Penn in Fee, and the other three sixth Parts to the said Thomas, Richard and Dennis Penn, and their Heirs, as Joynt tenants for ever. Proviso that if the said John Penn should not pay to his Sister Margaret Penn 1500*l.* at her Marriage or age of 21, which should first happen, In such Case she appointed for her Daughter Margaret in Fee one third Part

of all that had been before appointed for the Use of her Son John. Deed of Appointment proved by Mr. Page.

1720.

William Penn junior, eldest Son and Heir of Proprietary Penn died, leaving two Sons, Springett and William, and a Daughter Gulielma Maria.

1721, *Octob.* 23.

The said Hannah Penn the Widow and her then Children, John, Thomas, Richard, Dennis and Margaret Penn, all Infants, brought their Bill in the Court of Exchequer, against the Earl of Oxford and Earl Poulett (to whom the Government had been devised, upon Trust to sell and apply the Produce in such manner as was intended to have been, but was not, afterwards directed) against the said Springett Penn the Grandson and Heir at Law of the Testator to establish the Will; against the said Henry Gouldney, Joshua Gee and others, the Survivors of the Mortgagees, to redeem, and also against Richard Hill, Isaac Norris and others the surviving Trustees in the Will, to whom the Lands had been devised in Trust, for to execute their Trust; and also against William Penn the Grandson, Gulielma Maria the Grand-daughter (and her Husband Aubrey Thomas) Letitia the Daughter (and her Husband) of the Testator, by his first Wife, who had Devises of 10,000 Aeres each under the Testator's Will, and against his Majesty's Attorney General, to know whether the Crown would, or would not, go on with a Treaty that had been set on foot by the Earl of Oxford in 1711 and 1712, to purchase the Government from Mr. Penn for 12,000*l*.

1722, *Feb.* 6.

Dennis Penn the Son of the Testator died an Infant and Without Issue.

1722, 1723, 1724.

And many answers of the Defendants were put in thereto. Copy of Bill and answers proved by Mr. Weston, Exc. No. 1, 2, 3, 4, 5, 6, 7, 8.

1723, *Feb.* 17.

There was such an Agreement in Writing between the said Hannah Penn and the Lord Baltimore, not to grant out Lands upon the Borders which had been contested, for 18 Months; in which Time 'twas hoped the Boundaries might have been settled: and also such Proclamations afterwards publisht by the Lieutenant Governors in both Provinces, notifying that temporary Agreement, as the Plaintiffs have charged at Fol. 154. in their Bill, and which the Defendant has fully admitted at Fol.

192. of his Answer; but such Agreement, having been mislaid, is not proved in the Cause.

1724, *Octo.* 6.

A Maryland Act of Assembly for repealing Part of the last mentioned Act made in Maryland in 1715; enacting that such Part of that former Act as imposed 9d. a Gallon on Rum, Spirits, Wine and Brandy to be imported from Pensilvania and the Territories thereto belonging by Land, should be repealed; but this not to exempt Persons bringing the said Liquors from Pensilvania by Land from paying the other Duty of 3d. per Gallon, which is declared to be still due and payable. Maryland Statute Book, Fol. 263.

Mr. Gouldney, one of the principal Mortgagees died.

1725, *Octob.* 23.

The said Hannah Penn, John, Thomas, Richard and Margaret Penn, filed their Bill of Reviver in the Exchequer, against the Executor of the said Gouldney, Exc. No. 9.

Nov.

Petition from Lord Sutherland again, to have a Grant of the three lower Counties; and Reference of the same by the Duke of Newcastle to the Attorney and Sollicitor General. These are to be proved viva voce on the Hearing, there is nothing material in them, only to shew that Lord Sutherland had such a second Petition depending, and thereby to warrant Paris's Deposition, who speaks of several Hearings that there were before the Attorney and Sollicitor General on that Petition. Exhibit Sec. Off.

During that Suit in the Exchequer, though carried on very adversarily between Mrs. Penn and her Children on the one side, and the Heir at Law of the Proprietor on the other, they both agreed, thus far, to turn out the Deputy Governor Mr. Keith (then become Sir William Keith) and to appoint another, viz. Patrick Gordon.

Jan. 7.

From the Records in Newcastle County, The Commission which was this Day granted by Springett Penn Esq; Grandson and Heir at Law of William Penn Esq; by and with the Advice and Consent of Hannah Penn, widow and Executrix of the said William Penn, testified by her signing and sealing the same, appointing Patrick Gordon to be Lieutenant Governor of the said Province of Pensilvania and Counties of Newcastle, Kent and Sussex. Newcastle Records, No. 11. Fol. 97. 98.

Mar. 4.

A Report from the Committee of Council made upon the Re-

presentation (which had been referred to them the 12th of February last) of Springet Penn Grandson and Heir at Law of William Penn Esq; deceased, and Hannah Penn the Executrix of the said William Penn, humbly recommending Major Patrick Gordon to be Deputy or Lieutenant Governor of Pensilvania and of the Counties of Newcastle, Kent and Sussex on Delaware in America, in the room of Sir William Keith; and praying his Majesty's Approbation of him accordingly; and which Report was also made upon a Petition presented by Colonel Spotswood on behalf of Sir William Keith, and upon another Petition presented by the Creditors of Sir William Keith, praying that Sir William might not be removed; their Lordships reported that they had received a good Character of Major Gordon, and offered their Opinion that his Majesty should be pleased to declare his Allowance and Approbation of Major Gordon to be Deputy Governor of the Province of Pensilvania without Limitation of Time, and of the three Counties of Newcastle, Kent and Sussex, during his Majesty's pleasure only, provided the said Gordon qualified himself, and gave the Security; and provided that the said Springet and Hannah Penn made a Declaration, in such manner as had been formerly made by the said William Penn, relating to his Majesty's Right to the said three Counties. Co. Off. No. 22.

1725, *March 11.*

The King by Order in Council, made upon reading that Report, ordered just in the same Words as proposed; and directed the Lords of Trade to take care that the said Security was given, and Declaration made accordingly. Co. Off. No. 22.

1726, *Apr. 18.*

By another Order in Council reciting the last Order and that the Lords of Trade had this Day reported that they had received a Declaration and Promise under the Hand and Seal of the said Springett Penn, and the like under the Hand and Seal of the said Hannah Penn, that his Majesty's Approbation of the said Gordon to be Deputy Governor of the said Province and of the three Lower Counties should not be construed in any manner to diminish or set aside his Majesty's Claim of Right to the said lower Counties; and that they had also received a Certificate of Security given in the Exchequer, of 2000*l.* for Gordon's observing the Acts of Trade, His Majesty in Council declared his Royal Approbation of the said Gordon to be Deputy Governor of Pensilvania without Limitation of Time, and of the said three lower Counties of Newcastle, Kent and Sussex, during only his Royal Will and Pleasure. Co. Off. No. 23.

This last foregoing Order is also entred in Newcastle Records, No. 11. Fol. 99.

Dec. 13.

A Decree was made in the said Cause in the Exchequer, but that was, unless Cause, for the Heir at Law, and all the Relations of the Family, by Mr. Penn's first Wife, made Default at the Hearing. Exc. No. 10.

Dec. 20.

Mrs. Hannah Penn died.

CHAP. XII. *From the Death of Mrs. Hannah Penn in December 1726, down to the time of Beginning the Treaty with Lord Baltimore for the Agreement now in Question.*

1727, *Apr.* 20.

The said John Penn, Thomas Penn, Richard Penn, and Margaret Penn (after their Mother's Death) brought their Bill of Revivor of the Suit in the Exchequer. Exc. No. 11.

May 15.

Order to revive the said Cause. Exc. No. 12.

July 4.

The Cause in the Exchequer came on again, and all Parties appeared, and the Court declared that Mr. Penn's Will and Declaration or Confirmation dated 27 May 1712, were duly proved. But, as concerning all other the Matters and Things in the Cause, ordered it should stand to be heard the then next Michaelmas Term. Paper Copy of the Decree, Exc. No. 13. And Exemplification of that Decree under the Seal of the Court of Exchequer.

July 5.

A Family Deed of Indenture Sextipartite between the Plaintiffs John, Thomas and Richard Penn, and their Sister Margaret Penn, together with Thomas Freame (whom she was then going to marry with) and two Trustees Joseph Wyeth and Silvanus Beavan. Reciting Mr. Penn's Will, and Mrs. Hannah Penn's Appointment, whereby 1500*l.* was secured for the Daughter Margaret, (And reciting a subsequent Appointment of Mrs. Hannah Penn's, after the Death of her Son Dennis, which it's now thought she had no Power to make, having before executed her Power, neither, if the second Appointment were good, would it all vary the Plaintiffs Title,) And reciting the said Decree, and Mrs. Hannah Penn's Will, and sundry Difficulties arising thereon, and many other Matters: For settling all Difference it's agreed, *inter alia*, that the said John Penn his Heirs and Assigns shall hold and enjoy one Moyety of all the Testator's Estate in America (subject to a Provision herein

after made for the said Margaret) And that the said Thomas and Richard Penn their Heirs and Assigns shall hold and enjoy the other half Part thereof as Tenants in common, and not as Joynt tenants; Proviso that John Penn's Moyety shall be subject to pay to the said Margaret 500*l.* and also an annuity of 50*l.* during her Life, to be paid to her separate Hands, and also with Payment of 1000*l.* in three Months after her Death, to the said Wyeth and Beavan in Trust for her Children, in such manner as she shall appoint. And all the Parties thereto agree that the Trustees, named in their Fathers' Will, shall convey the Lands accordingly. Deed proved by Mr. Page.

1729, Jan. 13, 14.

Indentures of Lease and Release being a Reconveyance from Joshua Gee and John Woods (who were the two only surviving Mortgagees) of all the mortgaged Premises unto John Penn and Thomas Penn their Heirs and Assigns; as to one Moyety to the Use of the said John Penn in Fee; as to one Quarter Part to the Use and behoof of the said Thomas Penn in Fee; and as to the other Quarter Part to the Use of the said John Penn and Thomas Penn in Fee, but in Trust for the said Richard Penn his Heirs and Assigns. Note, Mr. Richard Penn being then married was the Reason why the legal Estate was not vested in him, only the Trust thereof. Original Deeds of Conveyance proved by Mr. Page.

1730, Dec. 30.

Springett Penn, who was the Grandson and Heir of Proprietary Penn, died unmarried, and his younger Brother, William Penn, the Grandson, became Heir at Law of Proprietary Penn.

CHAP. XIII. *From the Beginning of the Treaty, to the Time of executing the Articles of Agreement in Question, and the Commissions for running the Lines pursuant to the same.*

1731, June 3.

Was the Day (as will appear in Evidence) when the Parties to this Cause had the first Meeting, in order to the Agreement.

June 3.

The written Map then produced and markt and made use of by the Plaintiffs on their Parts, in order to the Agreement, which has some other Words writ upon it, but all the Lines and Outmarks are exactly agreeable to my Lord Baltimore's Map which was afterwards graved and stampt, or printed, on the Original Articles of Agreement. This Map is proved by Paris, and is the Exhibit Par. No 1. in a marbled Cover.

The Treaty not proceeding at that time, but breaking off then, because at first, the Plaintiffs refused to agree to the Defendant's Proposals, the Lord Baltimore petitioned the King as follows:

July 1.

The Defendant the Lord Baltimore petition'd the King, and set forth the Grant of Maryland, made to his Ancestor in 1632, and the Description of the Tracts of Land, as they are therein exprest; and, That the late William Penn, by Grant under the Great Seal, in the Year 1680, became Proprietor of the Province of Pensilvania, and his Descendants (as the Petitioner believed) still were Proprietors of the same. That there had been diverse Disputes, between the Petitioner's Ancestors, and the said William Penn, about the Northern Boundaries of the said Province of Maryland, and frequent Application having been made to His Majestys Royal Ancestors in Council, in order to settle and ascertain the same, not only in the Year 1685, 1708, but so lately as in the Year 1720, by the Widow of the said William Penn, and divers Letters and Orders had been sent by His Majesty's Royal Ancestors for that purpose; but they had hitherto had no effect. That, by reason of the said Disputes, very great Numbers of the Petitioner's Tenants refused to pay any Rents, or to submit themselves to the Petitioner's Government, or really to any, which occasioned frequent Disputes, notwithstanding the Petitioner's great Care to prevent the same. He therefore prayed the King to order the Proprietors of the Province of Pensilvania forthwith to join with him in settling and ascertaining the said Boundaries; and, in case they refused to comply therewith, or in case the same should not be settled and ascertained within the Space of twelve Months from that time, that then, and in that case, the King would hear the Matter in dispute, and give such Order, and make such Determination, touching the the same, as to His Majesty should seem meet. Co. Off. No. 24.

If that Petition had any Meaning at all, surely it must be to carry into execution the Order of 1685, which is mentioned in that Petition; and which Order of 1685, expressly adjudged the Right to the three lower Counties, against him and had contained Directions for settling the Bounds of those lower Counties; but which Bounds had not, indeed then, nor yet neither, been ever run out.

July 1.

It was ordered that the said Petition should be referred to a Committee of the Lords of His Majesty's most Honourable Privy Council, to consider the same, and report their Opinion thereupon to His Majesty. Co. Off. No. 25.

July 22.

The written Heads for an Agreement, then produced by Lord Baltimore, and whereof a Copy, full of Abbreviations, was soon afterwards delivered by the Defendant's Solicitor to the Plaintiff's Solicitor, is in the following Words, viz.

1. There shall be a Circ. of 12 M. dist. drawn from Newcastle.
2. The Propr. of Pensil. shall be entituled to 15 Miles Soth of Phila. by a West Line drawn from the Point of the Soth and North to the extent of their West Limits comprised in the Charter of Pensa.
3. There shall be a Line South drawn from the East and West Line aforesaid, which shall intercutt the Periphery of the Circ. of 12 Miles from Newcastle, untill it intercutt the Parallel of an East and West Line drawn, the Promontory or Cape called Cape Hinlopen at rect Angles.
4. The Lord Baltimore, to quit all Pretensions to the three lower Counties (known to be at present comprised within the Limits aforesaid, that is to say, within the 12 Miles Circle of Newcastle and the North and South Line drawn as aforesaid on the West, and the Bay of Delaware on the East.
5. The Proprts. of Pensa. to quit all Pretensions to any Land to the Southward of the Line of 15 Miles from Phil., and to the West of the North and South Line heretofore described, and for the Considerations aforesaid convey to the Lord Baltimore, all Right and Title they may have thereunto belonging.
6. For the quieting the present Possessors of the Lands in dispute, and the better informing the respective Proprietors of the Provinces aforesaid, it is agreed by the Parties contracting that it shall and may be lawful for each Proprietor to have Copys at their respective Costs and Charges of the Grants, Patents, and Leases, &c. by which any of the present Claimants held their Land.

And moreover it is mutually agreed that fresh Patents, Leases, and Grants, shall be made out to all the Possessors of Land, Houses, &c. within the present disputed, and by this determined, Boundary without any Fines or Arrearages of Rent whatsoever, provided they become Tenants to the respective Provinces, subject to the Rents and Reserves common to the Landholders of the respective Provinces, subject nevertheless to usual Fees to the proper Officers of the said Provinces for the taking out of any new Patents for the Lands or Tenements they at present are possessed of.

This is proved by Paris, and is a very material Exhibit markt Par. No. 2.

We have, most particularly, charged this Paper to be of the Defendant's own Hand-writing, at Fo. 179. of our Bill, and

at Fo. 1415. we have demanded that he may produce it. He in his Answer, Fo. 257. admits there was such a Paper, but says it's mislay'd, but if he finds it, he will produce it.

If he does not, the Reason is most obvious, for this puts an end to his Commissioners Doubt (which yet he says he approves of) whether the Circle should be 2 Miles or 12 Miles, from Newcastle? For here, in two several Places, in his own Notes for drawing up the Agreement in Form, he says twice over, that the Circle shall be 12 Miles distant from Newcastle, and again 12 Miles from Newcastle.

NOTE—The Defendant has proved, by his own Solicitor Mr. Sharpe, that the foregoing Notes are lately found, and he sets forth an exact Copy of the same verbatim, in his Deposition. For which we are bound to thank him. And it's intended to move, that the Original may be produced at the Hearing by the Defendant, according to his Offer, now that it is found.

Aug. 16.

The Draught of the Articles of Agreement this Day delivered over to Mr. Sharpe, with his own Directions thereon, to Counsellor Wynne, and his own Marks and Notes thereon, that the Miles were to be mentioned English Statute Miles, &c. This Paper is proved by Serjeant Wynne, and by Paris, and is Exhibit, Par. No. 3.

Aug. 19.

Mr. Sharpe's Letter to Mr. Paris, that he had perused the Draught of the Agreement between Lord Baltimore and Messieurs Penns, and thought the same perfectly right, and had sent it that Night to Lord Baltimore for his Perusal, with a Desire to return it to him as soon as he had done with it, and the Moment it came back to Mr. Sharpe he would let Mr. Paris know it. This Exhibit is proved by Mr. Paris, and is Par. No. 4.

This serves to prove the Length of Time taken to consider the Draught, from August 1731, to 10 May 1732.

Sept. 22, 23.

Indentures of Lease and Release, whereby William Penn, Grandson and Heir at Law of Proprietary William Penn, in Consideration of 5500*l*. Releases and Quits Claim to the said Province and Counties, unto the said John and Thomas Penn in Fee; As to one Moiety to the use of John Penn in Fee; as to one quarter Part to the Use of Thomas Penn in Fee; and as to the other quarter Part, to the Use of John and Thomas Penn in Fee, but in Trust for Richard Penn, his Heirs and Assigns. Deeds proved by Paris.

Sept. 29.

Bargain and Sale enrolled, by way of Mortgage, from John, Thomas and Richard Penn, of the Province of Pensilvania only, excepting thereout the Government and Powers of Government, to William Penn in Fee, for securing 5000*l.* and Interest, proviso for Redemption. Deed proved by Paris.

Feb. 12.

By an Indorsement made on the Back of the Family Deed of 5 July 1727, Margaret (Penn) and her Husband Thomas Freame, release to the said John Penn the 500*l.* which had been therein secured to her out of Mr. Penn's Moiety. Endorsement proved by Mr. Page.

1732. *March 29.*

The new Clause, that Day delivered by Lord Baltimore, above 7 Months after the Draught of the Agreement had been delivered over, viz. "There must be a Clause to prohibit any of the "People of the respective Provinces to carry on any Commerce "into the Bays of Chesopeak and Delaware, by the means of "any River or Rivers, leading from one of the Provinces afore- "said to the other, without the Leave of the Proprietor of the "Province to whom the said Bay doth belong." Proved by Paris, and is the Exhibit, Par. No. 6.

April.

That Copy of Mr. Senex's written Opinion of the Articles which he delivered to the Plaintiffs, viz.

The Division, as described in the Articles. That there shall be drawn, so much of a Circle as is necessary, round Newcastle as a Center, at the Distance of 12 English Statute Miles. That there shall be a true East and West Line drawn, 'twixt Cape Hinlopen and the Chesopeak Bay: And that, from the middle of that Line, there shall be drawn a Right Line, Northwards, so as to become a Tangent Line, on the Western Side, to the above Circle, described at 12 Miles Distance from Newcastle. That, at the Distance of 15 English Miles from the most Southern Part of Philadelphia, there shall be drawn Westwards a Parallel, or due East and West Line, whose Distance, Westwards, is to be determined afterwards. That, from the Point of Contact of the afore described Tangent Line with the Circle, there shall be drawn a Meridian, or due North and South Line, so far as till it touches the said Parallel. That those Lines, so drawn, shall be the Boundaries 'twixt Pensilvania and Maryland. All to the Northward and Eastwards Pensilvania. All to the Southward and Westward Maryland. This Division of the Countries in dispute, betwixt the Lord Baltimore, &c. as described in the Articles of Agreement, &c. Seems to be much

more convenient and practicable, than any Division that can be made, by affixing the Longitude and Latitude of such Bounds—Because, the Longitudes and Latitudes of Places are with great Difficulty made sufficiently exact, to determine the true Place of such Boundaries, within less than a Mile or two Miles: Whereas, this Method is easily practicable, and determines it to what Exactness is required. Moreover, in case any Dispute at any time arises, it may soon be adjusted, by any skilful Surveyor, to the Satisfaction of each Party. John Senex.

This Exhibit is spoke to by Paris, and is proved to be Mr. Senex's Hand (who is dead) by Mary Senex his Widow, and by Thomas Hutchinson and Thomas Smith, who were his Servants. And is the Exhibit, Par. No. 5.

This Man, of my Lord Baltimore's own chusing, read and explained the Draught of the Articles, that the Circle was to be at 12 Miles Distance from Newcastle, and also shews that he understood Newcastle itself, as a Center.

1732, *April*.

The Copy of Lord Baltimore's Map, as engraved by Mr. Senex (who he chose to do it) or his Servants. Printed Map proved by Hutchinson and Smith, being the Exhibit Sen. No. 1.

May 10.

Copy at full length of the Articles of Agreement executed between the Parties, viz.

ARTICLES of Agreement indented, had, made, and concluded upon, this tenth Day of May, in the Fifth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God of Great Britain, France and Ireland. King, Defender of the Faith, &c. Annoque Domini 1732, between the Right Honourable Charles Lord-Baron of Baltimore in the Kingdom of Ireland, true and absolute Lord and Proprietary of the Provinces of Maryland and Avalon, &c. of the one Part, and John Penn, Thomas Penn, and Richard Penn Esqrs. Sons and Devises under the Will of William Penn Esq; the Elder, their late Father, true and absolute Proprietaries of the Province of Pensilvania, &c. of the other Part, in Manner and Form following; that is to say,

Whereas, his late Majesty King Charles the First. by his Royal Charter or Letters Patent under the Great Seal of England, bearing Date at Westminster the twentieth Day of June, in the eighth Year of his Reign, did give, grant, and confirm unto Cecilius, then Baron of Baltimore, (the Great Grandfather of the said Charles Lord Baltimore) and to his Heirs and Assigns, all that Part of a Peninsula lying in the Parts of America,

between the Ocean on the East, and the Bay of Chesapeake on the West, and divided from the other Part thereof by a Right Line from the Promontory or Cape of Land called Watkin's Point, (scituate in the aforesaid Bay near the River of Wighco) on the West, unto the main Ocean on the East; and, between that Bound on the South, unto that Part of Delaware Bay on the North, which lieth under the fortieth Degree of Northerly Latitude from the Equinoctial, where New England ends; And All that Tract of Land, between the Bounds aforesaid; that is to say, passing from the aforesaid Bay called Delaware Bay, in a Right Line, by the Degree aforesaid, unto the true Meridian of the first Fountain of the River Pattowmeck, and from thence trending toward the South unto the farther Bank of the aforesaid River, and, following the West and South Side thereof, unto a certain Place called Cinquack, scituate near the Mouth of the said River, where it falls into the Bay of Chesapeake, and from thence, by a straight Line, unto the aforesaid Promontory and Place called Watkin's Point (except, as therein is excepted:) And his said late Majesty did thereby also grant and confirm unto the said then Lord Baltimore, his Heirs and Assigns, all Islands and Islets within the Limits aforesaid, and all and singular the Islands and Islets, which were or should be in the Ocean, within ten Leagues from the Eastern Shore of the said Country towards the East, with all and singular Ports, Harbours, Bays, Rivers and Inlets belonging unto the Country or Islands aforesaid: And all the Soil, Lands, Fields, Woods, Mountains, Fenns, Lakes, Rivers, Bays and Inlets scituate or being within the Bounds and Limits aforesaid: And moreover, all Veins, Mines and Quarries, as well discovered as not discovered, of Gold, Silver, Gemms and precious Stones, and all other Mines whatsoever of Stones, Metals, or of any other Thing or Matter whatsoever, found, or to be found, within the Country, Isles, and Limits aforesaid, reserving as therein is reserved: together with divers ample Rights, Jurisdiccions, Privileges, Prerogatives, Royalties, Liberties, Immunities, Royal Rights and Franchises, of what kind soever, more at large set forth in the said Letters Patent. And the said then Lord Baltimore, his Heirs and Assigns, his said late Majesty did thereby for himself, his Heirs and Successors, make, create, and constitute the true and absolute Lords and Proprietaries of the Country aforesaid, and of all other the Premises (except as before excepted) to have, hold, possess and enjoy the said Country, Isles, Islets, and other the Premises, unto the said then Lord Baltimore, his Heirs and Assigns, to the sole and proper Use and Behoof of him the said then Lord Baltimore, his Heirs and Assigns for ever: as by the said Char-

ter, relation being thereunto had, may more fully and at large appear.

And whereas his late Majesty King Charles the Second, by his Royal Charter or Letters Patent under the Great Seal of England, bearing Date at Westminster the fourth Day of March, in the thirty-third Year of his Reign, for the Consideration therein mentioned, did give and grant unto the said William Penn the Elder, his Heirs and Assigns, ALL that Tract or Part of Land in America, with all the Islands therein contained, as the same was bounded, on the East, by Delaware River, from twelve Miles distance Northwards of New-Castle Town, unto the forty-third Degree of northern Latitude, if the said River did extend so far Northward; but, if the said River should not extend so far Northward, then, by the said River so far as it did extend; and, from the Head of the said River, the Eastern Bounds were to be determined by a Meridian Line, to be drawn from the Head of the said River unto the said forty-third Degree: The said Lands to extend Westward five Degrees in Longitude, to be computed from the said Eastern Bounds: And the said Land to be bounded, on the North, by the beginning of the forty-third Degree of northern Latitude, and, on the South, by a Circle drawn at twelve Miles distance from New-Castle, Northwards and Westwards, unto the beginning of the fortieth Degree of northern Latitude, and then, by a strait Line, Westward, to the Limit of Longitude above-mentioned. And his said late Majesty King Charles the Second did thereby also give and grant unto the said William Penn the Elder, his Heirs and Assigns, the free and undisturbed Use and Continuance in, and Passage into and out of all and singular Ports, Harbours, Bays, Waters, Rivers, Isles, and Inlets, belonging unto or leading to or from the Country or Islands aforesaid; and all the Soil, Lands, Fields, Woods, Underwoods, Mountains, Hills, Fens, Isles, Lakes, Rivers, Waters, Rivulets, Bays and Inlets, situate or being within, or belonging unto the Limits and Bounds aforesaid; and also all Veins, Mines, and Quarries, as well discovered as not discovered, of Gold, Silver, Gems and precious Stones, and all other whatsoever, of Stones, Metals, or any other Thing or Matter whatsoever, found or to be found within the Country, Isles, and Limits aforesaid; and him the said William Penn the Elder, his Heirs and Assigns, his said late Majesty King Charles the Second did, by the said Royal Charter, for himself, his Heirs and Successors, make, create, and constitute, the true and absolute Proprietaries of the Country aforesaid, and of all other the Premises, TO HAVE, hold, possess, and enjoy the said Tract of Land, Country, Isles, Inlets, and other the Premises, unto the said William Penn the

Elder, his Heirs and Assigns, to the only proper Use and Be-hoof of the said William Penn the Elder, his Heirs and Assigns for ever; as by the said last recited Charter or Letters Patent (amongst divers other Matters and Things therein contained) relation being thereunto had, may more fully and at large appear.

And whereas by Indenture of Bargain and Sale enrolled, bearing Date on or about the four and twentieth Day of August, in the Year of our Lord One Thousand Six Hundred Eighty and Two, and made or mentioned to be made, between his Royal Highness James, then Duke of York, (afterwards James the Second, King of England) of the one Part, and the said William Penn the Elder of the other Part, his said Royal Highness (for the Considerations in the said Indenture mentioned) did bargain, sell, enfeoff, and confirm unto the said William Penn the Elder, his Heirs and Assigns for ever, ALL that the Town of New-Castle, otherwise called Delaware, and all that Tract of Land lying within the Compass or Circle of twelve Miles about the same, scituate, lying, and being upon the River Delaware in America, and all Islands in the said River Delaware, and the said River and Soil thereof, lying North of the Southernmost Part of the said Circle of twelve Miles about the said Town, together with all Rents, Services, Royalties, Franchises, Duties, Jurisdictions, Liberties and Privileges thereunto belonging; and all the Estate, Right, Title, Interest, Powers, Property, Claim and Demand whatsoever, of his said Royal Highness, in or to the same, To hold to the said William Penn the Elder, his Heirs and Assigns, to the only Use of the said William Penn the Elder, his Heirs and Assigns for ever.

And whereas by another Indenture of Bargain and Sale, or Feoffment, bearing Date on or about the said four and twentieth Day of August in the said Year One Thousand Six Hundred Eighty and Two, and made, or mentioned to be made between his said Royal Highness of the one Part, and the said William Penn the Elder of the other Part, his said Royal Highness for the Considerations in the said last Indenture mentioned, did bargain, sell, enfeoff, and confirm unto the said William Penn the Elder, his Heirs and Assigns, all that Tract of Land upon Delaware River and Bay, beginning twelve Miles South from the Town of New-Castle, otherwise called Delaware, and extending South to the Whore Kilns, otherwise called Capin Lopen, (which said last mentioned Tract of Land hath been divided into two Counties, and called by the Names of Kent and Sussex: and these two Tracts, together with the Town of New-Castle, are, and have been, commonly called by the Name of the three lower Counties of New-Castle, Kent and Sussex)

together with the Soil, Fields, Woods, Underwoods, Mountains, Hills, Fenns, Isles, Lakes, Rivers, Rivulets, Bays and Inlets, seituate in or belonging unto the Limits and Bounds aforesaid; together with all sorts of Minerals, and all the Estate, Interest, Royalties, Franchises, Powers, Privileges and Immunities whatsoever, of his said Royal Highness thereunto. To hold unto the said William Penn the Elder, his Heirs and Assigns, to the only Use and Behoof of the said William Penn, his Heirs and Assigns for ever: as by the said two several Indentures of Bargain and Sale or Feoffment, relation being unto them respectively had, may more fully appear.

And whereas, soon after the granting the said Charter and Deeds of Bargain and Sale or Feoffment unto the said William Penn the Elder, several Disputes and Differences arose between the then Lord Baltimore, (Grandfather of the said Charles Lord Baltimore) and the said William Penn the Elder, touching the respective Bounds and Limits of the said Provinces of Maryland and Pensilvania, and between the said Province of Maryland and the said three lower Counties of New-Castle, Kent and Sussex, in regard that the Observations made by Mathematicians and other skilful Persons from time to time, in order to the fixing the Place of the fortieth Degree of northerly Latitude (mentioned and referred to by both the said Charters of Maryland and Pensilvania) greatly varied and differed from each other; and also, in regard that the said Tracts of Land, since called the three lower Counties of New-Castle, Kent and Sussex, which were granted to the said William Penn the Elder, by the said Deeds of Bargain and Sale or Feoffment (or at least some Parts thereof) were comprized within the Bounds and Limits which had been mentioned in the said Charter of Maryland. And whereas, notwithstanding several Treaties and Endeavours for settling the said Disputes and Differences, divers Difficulties have arisen, and many Persons have seated themselves upon great Parcels of the Lands in dispute, without Authority from either of the Proprietors, and without paying the usual Fines or Quit-rents, or conforming themselves to the Government and Establishment settled in any of the said Provinces or Counties: But, for the putting a final and friendly End and Accommodation to the said Disputes and Differences, the Parties hereunto have come to the following Agreement touching the same.

Now therefore these present Articles witness, That it is hereby mutually and reciprocally covenanted, promised, declared and agreed by each and every one of the said Parties to these Presents, for himself, and his Heirs, Executors and Administrators, to and with all and every other of the same Parties to these

Presents, and their several and respective Heirs, executors and Administrators, in Manner and Form following; that is to say,

I. That the Draught or Plan printed in the Margin upon this Skin of Parchment, which contains a Map of the Peninsula herein before mentioned, and also of the Tracts of Ground wherein the said Province of Maryland, (or Part thereof) the said Three Lower Counties, Part of the said Province of Pennsylvania, and Part of Virginia do lie, is a true Copy of those which had been sent over from America, to the present Parties hereto, by their respective Agents in those Parts, for the Assistance and Guidance of the said Parties, in the settling the said Disputes, and by which this present Agreement is to be explained and understood.

II. That there shall be the said Circle, mentioned in the said Charter for Pennsylvania, and Deed of Bargain and Sale or Feoffment of New-Castle, (or so much thereof as is requisite) drawn and marked out at the twelve Miles distance from the Town of New-Castle; which twelve Miles shall be twelve English Statute Miles.

III. That a due East and West Line shall be drawn across the said Peninsula, (or across so much of it as shall be requisite) such East and West Line to begin, on the East Part, at the Place in the said Draught or Map called Cape Hinlopen, which lies South of Cape Cornelius, upon the eastern Side of the said Peninsula, towards the main Ocean, and, at the Point of the said Cape; and to run toward the western Side of the said Peninsula, which lies upon the Chesapeake Bay; but to stop, in the exact middle of that Part of the same Peninsula, when so running a due East and West Course.

IV. That, from the Western Point or End of the said East and West Line (which Western Point or End shall be just half way across the said Peninsula) a strait Line shall run, Northward, up the said Peninsula (and above the said Peninsula if it require it) till it shall so touch the Western Part of the Periphery of the said Circle, as to make a Tangent thereto: The said strait Line, as at present apprehended will run pretty near South and North, but (however it may bear on the Compass) such strait Line shall be run Northward up the said Peninsula (and above the said Peninsula if it require it) and shall begin at and from the Western Point or End of the aforesaid East and West Line, and shall run until it touches, and makes a Tangent to, the Western Part of the said Periphery of the said Circle, and, there, the said strait Line shall end.

V. That, at the Northern Point or End of the said strait Line, a Line shall begin, and shall, from thence, run due North above the said Peninsula, but so far only until it comes into

the same Latitude, as fifteen English Statute Miles due South of the most southern Part of the City of Philadelphia.

VI. That a due East and West Line shall be run in manner following; it shall begin at the northern Point or End of the said due South and North Line, and shall, from thence, run due West cross Sasquehannah River, to the utmost Western Extent of the said Province of Pensilvania, or so far in Part thereof as shall be at present requisite, in regard that, as the same is to be a due East and West Line, the beginning Part thereof may be sufficient to continue the same by, when further Occasion shall require, and when the Lands Westward in the said Provinces of Maryland and Pensilvania shall be better settled, and that it would occasion a very great Expence, and likewise be at present needless, to run the same to the utmost Extent Westward of the said Province of Pensilvania; however, the same shall (at present) be run cross Sasquehannah River, and about five and twenty English Statute Miles further on the Western Side of the said River.

VII. That the Part of a Circle, at present drawn with Red Ink upon the said Draught or Plan, and the red Lines also drawn thereupon, are now drawn to serve as an Explanation to this present Agreement, but not with exact Certainty, in regard the said Draughts or Plans, so sent over to the Parties aforesaid, have neither Scale or Compass to them.

VIII. That the first above-mentioned due East and West Line to run from Cape Hinlopen to the Middle of the Peninsula, and the said strait Line to run from the Westward Point thereof Northwards up the said Peninsula (and above the said Peninsula, if it require it) till it touches or makes a Tangent to the Western Part of the Periphery of the said twelve Miles Circle; and the said due South and North Line to run from such Tangent till it meet with the Upper or more Northern East and West Line: And the said upper East and West Line to begin from the Northern Point or End of the said South and North Line, and to run due Westward at present cross Sasquehannah River, and Five and Twenty English Statute Miles at least on the Western Side of the said River, and to be fifteen English Statute Miles South of the Latitude of the most Southern Part of the said City of Philadelphia, are and shall be, and shall at all Times for ever hereafter be allowed and esteemed to be, the true and exact Limits and Bounds between the said Province of Maryland, and the said Three Lower Counties of New-Castle, Kent, and Sussex, and between the said Provinces, of Maryland and Pensilvania; excepting only, that in case the said North Line from the Tangent of the Circle of New-Castle shall break in upon the said Circle, in such Case, so

much of the said Circle as shall be cut off by the said Line, shall belong to and be Part of the County of New-Castle.

Provided always, and it is hereby mutually covenanted, concluded, and agreed, by and between the Parties to these Presents, that in case it should happen in the Running or Setting out the Lines or Boundaries hereby agreed upon, that the Head or Heads of any River or Rivers leading either into the Bay of Chesapeake, or into the Bay of Delaware, or unto the Sea, shall remain on one Side the Lines and Boundaries hereby agreed to be run or set out, and that the lower Part of such River or Rivers shall remain within or run thro' the other Province or Counties, and on the other Side of such Lines and Boundaries; then, and in such Case, this present Agreement, or any Matter or Thing herein contained, is not intended, and shall not in any Wise be construed or extended to give or yield to the People or Inhabitants of the Province or Counties within whose Limits the Heads of any such River or Rivers shall according to this present Agreement fall or remain, any Sort of Right or Title to carry on any Commerce into the said Bays of Delaware or Chesapeake, or either of them, or into the Sea thro' the lower Parts of such River or Rivers, which may run thro' the Territory or Limits of any other Province or Counties, without the Leave or Licence of the respective Proprietor or Proprietors of the Province or Counties thro' whose Territories such lower Parts of the said River or Rivers shall run, first duly had and obtained; this Agreement, or any thing herein contained, to the contrary thereof in any wise notwithstanding.

This Clause is translated verbatim into the very Commissions, nevertheless, the first Objection made by the Maryland Commissioners was, for that some other different Persons had not also joined in granting our Commission.

IX. That the said Charles Lord Baltimore, and his Heirs and Assigns on his part, and the said John Penn, Thomas Penn, and Richard Penn, and their several and respective Heirs and Assigns on their parts, shall and will, by fit and proper Powers and Instruments, within two Calendar Months from the Day of the Date of these Presents, authorize and appoint a sufficient Number of discreet and proper Persons, not more than seven on each side, to be their respective Commissioners, with full Power to the said seven Persons, or any three or more of them, for the actual running, marking, and laying out, the said Part of a Circle, and the said before-mentioned Lines: which said Commissioners shall give due and proper Notice to each other, and shall fix and agree upon a Time or Times to begin and proceed in the running, marking, and laying out the same: and the same

shall be begun, at the farthest, some time in the Month of October next, and shall be proceeded in with all Fairness, Candour, and Dispatch that may reasonably be. And the said Lines shall be marked out by visible Stones, Posts, Trees, Pillars, Buildings, Land-marks, or other certain Boundaries which may remain and continue; such Boundaries to be marked, on one side, with the Arms of the said Charles Lord Baltimore, and, on the other side, with the Arms of the Proprietors of Pensilvania. And such Lines shall be compleatly so run, mark'd, and laid out, (as far as by this Agreement is intended) on or before the twenty-fifth Day of December, One thousand seven hundred and thirty-three: and, when so done, a true and exact Plan and Survey thereof, with the best and most exact and certain Descriptions that can possibly be given of the same, shall be made up, and sign'd, and seal'd, by the said Commissioners on both sides, and by their Principals, and shall be entred in all the publick Offices, in the said several Provinces and Counties: And moreover it shall be recommended by the respective Proprietors to the Assemblies of the said several Provinces and Counties, forthwith to pass Acts of Legislature for the Visitation upon certain fix'd Days, to be agreed on on both sides (at least once in every three Years) and for the continual Reparation of the said Boundaries and Bound-marks, that no Disputes may arise hereafter concerning the same.

Provided always, and it is hereby agreed, that in Case a sufficient Quorum of the Commissioners to be named on either side, shall not, from time to time, according to the Appointments and Adjournments to be made for that purpose, attend to proceed in the marking and running out the Lines and Bounds aforesaid, for want whereof the same cannot be done within the Time before limited, then, this present Agreement, and every Article and Thing herein contained, shall cease, determine, and be void; and, then, and in such Case, the Party or Parties, whose Commissioners shall make such Default, his or their Heirs, Executors, or Administrators, shall and will forfeit and pay, to the other Party or Parties, whose Commissioners shall attend, his or their Heirs, Executors or Administrators, upon Demand, the Sum of Five Thousand Pounds of lawful Money of Great-Britain.

X. That the said Charles Lord Baltimore, for himself and his Heirs, doth by these Presents for ever renounce, release, and quit claim unto the said John Penn, Thomas Penn, and Richard Penn, and their Heirs, all Rights, Titles, Interest, Powers, Prerogatives, Claims, Demands, and Pretentions, to the said Province of Pensilvania, and to the said Three lower Counties of Newcastle, Kent, and Sussex, to be so bounded as aforesaid,

(Part at least of the same Three lower Counties being now known to be comprized within the Bounds mentioned in the said Charter of Maryland) and shall also, at the Request and Cost in the Law of the said John Penn, Thomas Penn, and Richard Penn, and their Heirs, grant, convey, and assure, in the most effectual Manner, the said Province of Pensilvania, and the said Three Lower Counties to be bounded as aforesaid, and all his and their Right, Title, Interest, Powers, Claims, and Demands, in and to the said Province of Pensilvania, and the said Three Lower Counties to be so bounded as aforesaid, and every Part of the same, free of all Incumbrances by the said Cecilius Baron of Baltimore, Great Grandfather of the said Charles Lord Baltimore, Charles Grandfather of the said Charles Lord Baltimore, Benedict Father of the said Charles Lord Baltimore, or by him the said Charles Lord Baltimore Party hereto, his Heirs or Assigns, excepting such Grants and Agreements to Planters as herein after mentioned, unto the said John Penn, Thomas Penn, and Richard Penn, and their Heirs; TO HAVE AND TO HOLD unto the said John Penn, Thomas Penn, and Richard Penn, and their Heirs, to the only Use and Behoof of them and their Heirs for ever, in such Manner as by them the said John Penn, Thomas Penn, and Richard Penn, or their Heirs, or their Council learned in the Law, shall be reasonably devised, advised, and required. AND on the other Hand, the said John Penn, Thomas Penn, and Richard Penn, for themselves and their Heirs, do by these Presents for ever renounce and quit claim unto the said Charles Lord Baltimore and his Heirs, all Rights, Titles, Interest, Powers, Prerogatives, Claims, Demands, and Pretensions to the said Province of Maryland, to be so bounded as aforesaid, (Part whereof when so bounded being apprehended to be comprized within the Bounds mentioned in the said Charter for Pensilvania;) and shall also at the Request and Cost in the Law of the said Charles Lord Baltimore and his Heirs, grant, convey, and assure, in the most effectual Manner the said Province of Maryland, to be so bounded as aforesaid, and all their and every of their Right, Title, Interest, Powers, Claims, and Demands, in and to the said Province of Maryland, to be so bounded as aforesaid, and every Part of the same, (free of all Incumbrances by the said William Penn the Grandfather, William Penn the Father, Springett Penn Esq; deceased, William Penn the Son, John Penn, Thomas Penn, and Richard Penn, their Heirs or Assigns) excepting such Grants or Agreements to Planters as herein after mentioned, unto the said Charles Lord Baltimore and his Heirs, to have and to hold unto the said Charles Lord Baltimore and his Heirs, to the only Use and Behoof of him and his Heirs

for ever, in such Manner as by him or them, or his or their Council learned in the Law, shall be reasonably devised, advised, and required.

XI. And whereas during the Disputes which have hitherto subsisted, and now are accommodated between the Parties to these Presents, divers Persons under Grants, Patents, Leases, Warrants, Licences and Agreements, made and granted from and agreed with the said Charles Lord Baltimore and his Ancestors, before the fifteenth Day of May, One thousand seven hundred twenty and four, may have cleared, occupied and possessed, several Parcels of Lands within the Limits and Bounds hereby yielded and agreed upon for the said Province of Pennsylvania, and for the said Three Lower Counties: And in like manner other Persons under Grants, Patents, Leases, Warrants, Licences and Agreements made and granted from, and agreed with the said John Penn, Thomas Penn, and Richard Penn, or their Ancestors, before the said fifteenth Day of May, One thousand seven hundred twenty and four, may have cleared, occupied and possessed several Parcels of Lands within the Limits and Bounds hereby yielded and agreed upon for the said Province of Maryland, and it may be proper to quiet such Occupiers and Possessors in their respective Possessions (which might otherwise be disturbed by this present Agreement of the Proprietors, under some Restrictions;) It is therefore mutually agreed, that in order to the Information of the Parties to these Presents, touching the Premises, each of the said Proprietors shall have full and free Liberty to take Copies at their respective Costs and Charges, of all Grants, Patents, Leases, Warrants, Licences and Agreements, which at any time before the said fifteenth Day of May, One thousand seven hundred twenty and four, have been made or granted by the respective Proprietors or their Ancestors, and under which any of the said Occupiers do hold or claim any such Parcels of Land: And in order to quiet and settle such Occupiers, every of them shall and may, upon Request and Payment of the accustomed Fees, in such Cases only, have new Grants or Patents from the respective Proprietors within whose Territory or Limits their Lands, by virtue of, or according to this present Agreement, shall lie, for the like Estate, Term, and Interest, as mentioned in their original Grants, Warrants, Leases, Licences or Agreements, upon condition that the said Occupiers respectively do first attorn, and become Tenants to their respective Proprietors within whose Territory or Limits their Lands now lie, by virtue of, or according to this present Agreement, and do submit themselves in all Things to the Government thereof, and do pay to their new Proprietor or Proprietors (unless it shall be dispensed

with by him or them) all such Fines, Rents and Arrearages of Rents and Duties, as by their original Grants, Licences or Agreements, were to have been payed to their former Grantor or Proprietor, and which have not been really and bona fide payed to or to the Use of such their former Proprietor; and for the time to come, such Occupiers shall be put upon the like Foot and Condition with the rest of the Occupiers and Tenants who hold Lands in such Parts of the said respective Provinces and Counties as have never been in Contest; and such Occupiers and Tenants claiming originally under another Proprietor, as aforesaid, shall hold their Lands and have Patents thereof granted them by their new Proprietor, subject to the like Fines, Rents, Quit-Rents, Duties, Services and Reservations, as the other Landholders are, and have been generally subject to in the respective Provinces and Counties to which they shall belong. Provided always, that in Cases where any Persons during the Disputes which have subsisted between the said Proprietors have taken double Title; that is to say, from both the said Proprietors or their Commissioners or Officers, under which they have sheltered themselves by turns against each of the said Proprietors, and also in Cases where any Persons during the said disputes, have of their own authority seated themselves down upon any Parcels of Lands, without Licence or Authority in Writing from either of the said Proprietors, such Persons in respect of such Lands, are by no means to be included in this present Article, but are (however) to be treated with Moderation, and with some Regard; and the more so, in case they have heretofore actually paid the usual Quit-Rents and Services to either of the said Proprietors, and provided they bring in, surrender or yield up their former Grant, Licence, Warrant, Lease or Agreement, and submit to hold only under the proper Lord or Proprietor as the Case may be.

XII. That in case the Parties hereto can conclude upon any further Clauses in favour of the Occupiers of any Lands within the Bounds heretofore disputed, but by these Presents fixed and determined: the same shall be contained in a subsequent Agreement between them.

Lastly, That all the Parties hereto, and their Representatives, shall at all times hereafter use all friendly Means and Offices to the utmost of their power, to assist and support this present Agreement, and the several and respective Rights, Interests and Pretensions of the Parties, by virtue hereof.

In Witness, &c.

The foregoing Articles are proved to be executed by all Parties, by Mr. Taylor and by Paris. And are Exhibits Art. And Par. No. 7.

NOTE—Upon some of the six several parts of those Articles there was an Endorsement executed (of the same Date with the Articles) by William Penn, Letitia Aubrey and Charles Fell and Gulielma Maria his Wife; whereby all those Persons assented to those Articles, and promised not to hinder or obstruct the said Agreement, or the due Execution thereof, in any manner or wise. Endorsement on the said Articles, Par. No. 7. and proved by Paris.

1732, *May* 12.

The Draught of the Commission prepared for the Plaintiffs to authorise their Commissioners to carry the Articles into Execution, which the Defendant and his Solicitor approved; with Mr. Sharpe's Endorsement thereon of the Names which he would have inserted for the Defendant's Commissioners. This is proved by Paris, and is Exhibit Par. No. 8.

Same Day.

The Original Commission executed by the Plaintiffs, authorising their Commissioners to carry the Agreement into Execution, which recites the Agreement most minutely. The Execution of this Commission by the Plaintiffs is proved by Mr. Taylor, and this Exhibit is in Parchment markt Com.

And thus the written Articles of Agreement were executed.

CHAP. XIV. *From the Time of sealing the Articles here in London in May 1732, down to the End of the Year 1733.*

Aug. 26.

An Order of Council, which does not directly make any Proof in the Matter in question, otherwise than as a very strong Precedent, (founded upon the present Lord Chancellor's Opinion) that the Crown will not disturb ancient Possessions, or take Advantage of defective Titles in America. The Order altogether is long, but the Case was, the Crown had ordered Mr. Dunbar, the Surveyor General, to endeavour to form a Colony or Settlement in a Part of New England, which seemed to be unimproved, adjacent to Nova Scotia. Hereupon. Samuel Waldo, Elisha Cook and Sir Biby Lake, and others, petitioned the King, and set up a Title thereto, and some Endeavour that had been used to settle the same, and some Expences layd out therein, but that frequent Indian Wars had disturbed them, and it came out, that the French had conquered that Territory in 1696, and that in the Year 1710, it was reconquered under General Nicholson; and was afterwards ceded by France, to Great Britain, by the Treaty of Utrecht: and the Matter being referred to the then Attorney and Solicitor General (Yorke

and Talbot), They reported, that some of the Petitioners had Titles under the Council of Plymouth, and others from Indians, pretending to be Owners of the Land, under which large Sums had been laid out, in endeavouring to settle and improve, and tho' interrupted and defeated by frequent Wars and Incursions of the Indians, yet, some of their Tenants appeared to be still in Possession of some Parts of the said Land. The Attorney and Sollicitor also reported, "That some Objections were made, "before them, to the Nature of the Grants and Conveyances under "which the Petitioners claimed, and to the Manner of deducing "down their Titles, but they conceive that, in Questions of "this kind, concerning Rights to Lands in the West Indies, "and upon Enquiries of this Nature, the same Regularity and "Exactness is not to be expected, as in private Suits, concerning "Titles to Lands in England; but that, in these Cases, the "principal Regard ought to be had to the Possession, and the "Expences the Parties have been at in endeavouring to settle and "cultivate such Lands; Therefore, upon the whole Matter, they "are of Opinion that the Petitioners, their Tenants or Agents, "ought not to be disturbed in their Possession, or interrupted "in carrying on their Settlements, in the Lands granted to "them, within the District in question." Thereupon the Lords "of the Committee of Council also reported, "That they agreed "in Opinion with his Majesty's Attorney and Sollicitor General "(Inter alia) That the Petitioners, their Tenants or Agents, "ought not to be disturbed in their Possession, or interrupted "in carrying on their Settlements, in the Lands granted to them "within the District in question." And therefore advised the King to revoke, and he accordingly, by his Order in Council of this Date, did revoke, the Instructions which he had before given on 27 April 1730, to the Governor of Nova Scotia, and the Surveyor General, relating to the settling the said Lands, and ordered the Surveyor General to quit the Possession of all the said Lands. Original Order of Council under Privy Council Seal, Co. Off. No. 26.

1732. Oct. 7.

Bargain and Sale enrolled, whereby William Penn the Grandson, conveyed his 5000*l.* Mortgage upon Pensilvania, unto Alexander Forbes, for securing a Sum of 2500*l.* which he borrowed of him. The Deed proved by Paris.

Oct. 6, 7.

The Minutes of this Day's First Meeting of the Commissioners on both Sides at New-Town in Maryland, (as they were taken and kept by the Pensilvania Commissioners.) In which, after naming the Commissioners who were present, on both Sides,

they go on in the like Words as that Minute set forth by the Defendant in Fol. 456. in the Schedule to his Answer; which is contained in Fol. 25 and 26. of this Brief. This Minute is additionally proved by Samuel Preston and James Steel, two of our Commissioners. And is in the Pensilvania Exhibits, No. A. 1.

Oct. 30. 31. Nov. 1. 2.

The Defendant in the Schedule to his Answer, at Fol. 460. has given us a very short imperfect Minute, return'd to him by his Commissioners. and as if it had passed upon the 30th of October only. Whereas we have the following full Minutes of all those four Days, kept by our Commissioners, and proved by them, viz.

Oct. 30.

Five of the Commissioners appointed by Lord Baltimore, and all the 7 Commissioners appointed by the Plaintiffs being met, on the 30th of October, at Newcastle, in order to proceed to mark out the Circle mentioned in the Agreement between the said Proprietors. The Lieutenant-Governor of Maryland, opening the Conference, declared, They were now met to proceed to run the Circle about Newcastle, mentioned in the 2d Article of the Agreement, which he read; and as, in that Article, the Circle is said to be the Circle mentioned in the Charter for Pensilvania, and the Deed of Feoffment from the Duke of York. 'twas necessary they should see that Charter and the Deed of Feoffment. The Commissioners of Pensilvania answered that the Agreement fully recited the necessary Parts of the said Charter and Deed, That the respective Commissions from the Proprietors enjoyn'd the Commissioners to execute the several Articles agreed on, and that, as the Proprietors were mutually satisfied with the Recitals made in the Agreement, the Commissioners could want no further Satisfaction than was contained in those Recitals. But the Commissioners of Maryland insisting upon their Demand, those of Pensilvania condescended to send to Philadelphia for the Charter of Pensilvania, and for an Exemplification of the Deed of Feoffment from the Records of New York, where it was first entered, the Original being in England.

Oct. 31.

Present the same Commissioners. The Charter of Pensilvania under the Great Seal, with the Exemplification of the Duke of York's Deed of Feoffment to Mr. Penn for the Circle about Newcastle being brought from Philadelphia, the Commissioners of Maryland desired Copies of the descriptive Parts of the said Charter and Deed, wherein the said Circle was mentioned.

It was answered by those of Pensilvania, That the said Charter and Deed, with the Agreement between the Proprietors, being All on the Board, the Recitals, in the Agreement, might be now compared with the others, by the Commissioners present, and, if found to agree, they could not want any other Satisfaction; and, being compared, they were found exactly to agree verbatim, allowing for the Change of Words necessary in making Recitals. The Commissioners of Maryland continued to insist on Copies of the descriptive Parts, which, tho' represented to be altogether unnecessary after the Satisfaction already given them, were, notwithstanding, drawn out and delivered to them, certified to be true copies of the said descriptive parts under the hands of two of the Pensilvania Commissioners. It was then proposed that we should agree on a Place of beginning for running the 12 Miles distance; upon which much was said. And the Commissioners of Maryland alledging They must further consider it, the Business was adjourned till 3 in the Afternoon.

The same Commissioners meeting in the Afternoon. Those of Maryland questioned whether, by their Commission from their Proprietor They had full Power to run the described Circle? For, as there could be no Circle without a Center, that Center must be first had; but, it was no where directed by the Articles or Commission; and they conceived they had no Power to make one. It was answer'd, that the Commissioners, being impower'd and required to execute the Agreement in that Part, they were impowered to do all Things necessary to the Performance of it: For that it is a known Maxim in Law that where a Thing is prescribed to be done, the Means are, at the same time, prescribed. That, from Newtown, the Commissioners had adjourned to meet at Newcastle the 30th of October in order to proceed to mark out the Circle; That the Articles enjoyn'd the Business to be begun in the Month of October, at furthest; That this was the Afternoon of the last Day of October, and yet, nothing was done to any Effect. Those of Maryland answer'd, that every body must allow they had enter'd on the Business: They were now upon it, and they should all acknowledge, before any number of Witnesses, that they had begun the Business; But, how to proceed is the Difficulty. which appears such to them, as that they must further advise on it. The Commissioners of Pensilvania declared themselves fully impower'd, as they conceived, to do every thing necessary to the full Execution of their Commission: and, to save time, the Surveyors might be sent to measure the Town. The Commissioners of Maryland then proposed that the Company should walk about the Town and view it: and accordingly the Com-

missioners, of both Parts, adjurning till Morning, walkt out to view the Town.

Nov. 1.

The Commissioners being met, The Governor of Maryland, in Behalf of the Gentlemen of that Province, declared that, having advised both with Lawyers and Mathematicians, on the Subject of finding a Center, they were fully satisfied that, as the Center for the Circle is not directed by the Articles, or their Commission, They have no Power to make one; but that, as his Lordship's Arrival in Maryland is every Day expected, they thought it proper for them to apply to his Lordship at his coming; and if he would direct them to find a Center, they would readily obey; To which it was answered that the Proprietors, on both Parts, had absolutely concluded an Agreement, in full and clear Terms; That they had given full Powers to their Commissioners on both Sides, to execute that Agreement; And, the better to enable them, a printed Draft of the Work was annexed in the Margin, both of the Articles and Commissions, which was to be explanative and directive in case of any Difficulty; That the Town of Newcastle was fairly marked out, in that Draft, with a Central point in the Middle of it, on which the Circle in the Draft was drawn: That it was easy to find this Center, as it is there pointed out: Another Objection also that had been made, from the Suggestion of some Mathematician, that it is impracticable to draw any true Circle of such an Extent, in the Woods or Fields, being largely spoke to, the Governor of Maryland continued to insist on it, that they had no Power to find any Center, for that, if they fix on any, it may, as probably, be wrong as right, and, if wrong, it may injure Men in their Property, which they would avoid; Therefore, they must first take the further Directions of their Lord Proprietor, and, for that End, desire we may adjourn for same time, that they may have the Opportunity. The Commissioners, of Maryland appearing fixed in this, the Consideration of it was referred to the Afternoon.

The Commissioners meeting in the Aftenoon, those of Pensilvania said, that as they met here, fully prepared and resolved, to proceed to Business, the Proposal of an Adjournment was unexpected; and first they desired to know, to what Time those of Maryland desired the Adjournment should be made? Which, when considered, might the better enable them to judge whether they could agree to it: the Gentlemen of Maryland said, that, unless it were first agreed to adjourn, it would be to no Purpose to propose a Time; and insisted, that those of Pensilvania should

first agree to an Adjournment; which they declining, and much being spoken to it, It was insisted, on the Part of Pensilvania, that Minutes should be taken of what has past; which being also largely spoke to, and those of Maryland persisting in it, that all Minutes are unnecessary, further than to enter the Meetings and Adjournment; that each Side might keep what Minutes they pleased: The Commissioners of Pensilvania insisted, that it was absolutely necessary, in the Execution of all Commissions, to keep some Minutes, as a Register of the Commissioners Proceedings, otherwise, how shall it appear, what has been done in them? That they take this to be absolutely necessary in the present Case, and must appear so, in the Eyes of all Men of Understanding, acquainted with such Affairs; but those of Maryland declined to join in such Minutes, and then, they proposed the first of February, for the Day of Adjournment to meet at Newcastle. The Commissioners of Pensilvania took till Morning to give their Answer, which is in these Words; Gentlemen, You cannot but be sensible, that after the Preparations made to proceed on the execution of our Commissions, it cannot but be a Disappointment to us, to have an Adjournment proposed to us; for, as the whole Articles clearly shewed the Proprietors on both Sides were fully resolved, in the most amicable manner, to have their mutual Boundaries fixed, for which End, they had appointed us their Commissioners to run the Lines they had agreed on, and it is evident to us, and we are fully satisfied, that we have full Power to execute them, which it is required should be done with all the Fairness, Candour and Dispatch, that may be reasonable; but as the Reason assigned for the Adjournment is, the general Expectation of the Arrival of the Lord Baltimore in some short Time in Maryland, whom you are desirous further to consult, we have so very great Regard for that worthy Nobleman, and so great an esteem of his Honour, that, on that Consideration, alone, we agree to the Adjournment proposed; viz. the first Day of February ensuing, then to meet at the Town of Newcastle.

Nov. 2.

The Commissioners being met, those of Pensilvania said, that, having considered the Adjournment proposed by the Gentlemen of Maryland, they had come to a Conclusion thereupon; but as, at a former Meeting, they had strenuously insisted, that Minutes of what had now past should be kept, they thought it incumbent on them, to read at the Board the Minutes they had taken, at the Close of which their Answer to the Adjournment would appear; the Gentlemen of Maryland answering, that

those of Pensylvania, undoubtedly had the Liberty to read what Paper they pleased: the foregoing Minutes were read: The Adjournment being thus agreed to, the Gentlemen of Maryland were asked, whether they could object to the Truth of these Minutes? Their Governor answered, he had nothing to say to any Minutes we should take: but the same Question being repeated, and an Answer pressed for, he said, the Arguments used on their Part were not, in these Minutes, set in so strong a Light, as he believed he could place them in, if he were to draw the Minutes, and particularly observed that the Reasons he had given, for insisting on a Sight of the Charter for Pensylvania, and Deed of Feoffment for Newcastle, were not taken notice of: To which it was answered, that all Arguments were designedly omitted: He then desired one of the Commissioners, on the Part of Maryland, to read a Minute they had prepared, which mentioning only that, in pursuance of their former Adjournment, the Commissioners had met at Newcastle, to run the Circle, specified in the Agreement, and that, Difficultes having arisen touching the same, they had adjourned to the first Day of February, was objected to by the Commissioners on the Part of Pensylvania, as imperfect and unsatisfactory. The Governor of Maryland then producing a Paper, of some Notes he had taken, asked what the Gentlemen of Pensylvania could say to that? Which being read by him, was to this Effect, that five of the Commissioners for Maryland, and all those for Pensylvania, being met, in pursuance of their Adjournment at Newtown, He, upon reading the second Article of Agreement, desired a Sight of the Charter for Pensylvania, and Deed of Feoffment for Newcastle; that it had been argued by the Commissioners on the Part of Pensylvania, that the Charter and Deed, being recited in the Agreement, the Proprietors on both Parts were bound by the said Recitals, whether true or false. This being read, the Commissioners for Pensylvania immediately objected thereto, and insisted that no such Words had ever been used, by any of them, for it could not be supposed that the Recitals drawn by Council, and mutually signed by the Proprietors, could be false: the Governor of Maryland said, that, tho' these Words might not have been used, yet they were consequential to what was said; and then, putting up the Paper, without offering any other Minute, or an Amendment to that, on the Objection made, and observing that, an Adjournment being agreed to, there was no occasion for further Disputes, at this time; the Commissioners taking leave of each other, parted.

The foregoing four Days Minutes are all upon one Paper, and are proved by Messieurs Preston and Logan, and are the Pensylvania Exhibit marked Letter C.

Jan. 26.

A Commission from John, Thomas and Richard Penn of this Date, appointing (in their own Names) Major Gordon the former Governor, to be Governor of the said Province of Pennsylvania and Lower Counties. Newcastle Records, No. 11, Fol. 100.

Note.

They had before purchased a Release from their Father's Heir at Law.

Feb. 1, 2, 3.

Lord Baltimore in the Schedule to his Answer at Fol. 463. and the following Sheets (which are in Fol. 26. and 27. of this Brief) has given the Account of these Days Proceedings of the Commissioners, in such manner as he says his Commissioners returned the same to him; But as they are very short and defective, especially of all that past on the 3d of February (after the pretended Disappointment for about an Hour on our Parts) so we have Proof that one John Georges is dead, and we have Proof that he swore to an Affidavit (made upon the 26th Day of the same February) of what past on those Days; and our present Witness also says, he believes that that Affidavit was writ by the said John Georges; On which account, as a Paper writ by a man since dead (though not as an affidavit) we hope we may read it: And we have, the Copies of the Notices, duly proved, which were served upon the Maryland Commissioners upon the said 3d of February: which written Paper, and which Notices, are as follows, viz:

John Georges of Philadelphia in the Province of Pensilvania Gent. being solemnly sworn on the Holy Evangelists maketh Oath, That he was at Newcastle on Delaware the first Day of February Instant, where he saw Samuel Ogle, Charles Calvert, Matthew Tilghman Ward, Michael Howard, Benjamin Tasker and Edmund Jennings of Maryland Esquires, and likewise Isaac Norris, Samuel Preston, Andrew Hamilton, James Steel, and Robert Charles of the Province of Pensilvania; That he understood these Gentlemen to be Commissioners appointed for the Execution of certain Articles agreed upon by the Proprietaries of Pensilvania and Maryland. and had met together in the Afternoon of that Day, and likewise in the Forenoon and Afternoon of the Day following, which was the 2d Current; That this Deponent, in the Evening of that Day, being in Company with the above named Gentlemen of Pensilvania, heard them make great Complaints, of the Usage they received at the Hands of the Commissioners of Maryland, in giving needless Delays, and raising unaccountable Objections to the Work then before

them; That they particularly complained that, notwithstanding they had repeatedly pressed the Commissioners of Maryland to suffer a Clerk or Clerks to be present at their Meetings, and take Minutes of what should pass between them, and had supported the Proposal by the very best and most solid Arguments in their Power, yet those of Maryland persisted in a flat Denial, would allow no other Persons but the Commissioners to be present at the Meetings, nor would consent that the Proceedings should be carried on in Writing; That the Commissioners of Maryland amused them, the Commissioners of Pensilvania, all Day long, with a very strange Interpretation of the Circle to be described round Newcastle, as if the same was to contain only twelve Miles in Circumference, instead of being described with a Radius of twelve Miles; That it had been proposed, on this Point, to consult the Mathematicians and Artists attending on both sides; and that a Question, stated by the Commissioners of Maryland, though unfairly as was apprehended by those of Pensilvania, had been offered; That besides, as no Center was directed by the Agreement, they questioned whether they had any power to fix one And this Deponent saith, that next day, being the 3d of this Instant February, he went, in the Morning, to the Lodgings of some of the Pensilvania Commissioners, when he found they were all met together with their Artists, and were reducing into Writing their Thoughts on the Dispute then in Agitation touching the Circle, which they told this Deponent they intended to deliver to the Commissioners of Maryland, at their Meeting in the Forenoon: That this Deponent observed the Commissioners of Pensilvania to be in a great hurry for finishing the same; That three of the said Commissioners, viz. Messieurs Norris, Preston and Steel, went to the Court House of Newcastle, to meet the Commissioners of Maryland, leaving Messieurs Hamilton and Charles with the Artists; That this Deponent was sent to Mr. Steel, for a Paper in his Custody; That no sooner was the Paper, intended for the Commissioners of Maryland, drawn up, and the same, with a Copy thereof, duly compared by this Deponent, and the said Commissioners setting out for the Court-House, but Mr. Norris, returning, said, that Governor Ogle had taken it ill to have waited so long, and had broke up the Meeting; Whereupon Mr. Charles, with this Deponent in Company, went to Governor Ogle's Lodgings, and there this Deponent heard Mr. Charles tell the said Governor that it could not but surprize the Commissioners of Pensilvania to find that they were gone from the Court House: That probably it might, now, be an Hour, or an hour and half after the precise Time to which they stood adjourned: but could not believe that so small a Delay could be interpreted

a Failure in Meeting; since that, Yesterday, the Commissioners of Pensilvania had waited a full Hour after the adjourned Time for those of Maryland; and that they were now ready to wait of them, and a good deal of Business might be transacted before Dinner; To which Governor Ogle replied, that he could not think of meeting the Commissioners of Pensilvania, till he had consulted the Matter; for that, if any Advantage had arisen to Lord Baltimore his Constituent by the said Failure, he the said Mr. Ogle should think it imprudent to give it up; upon which, Mr. Charles again pressed the Meeting, but the other refused. This passed some time after 12 o'Clock at Noon, and, about an Hour thereafter, several of the Commissioners of Pensilvania, with this Deponent, went to the Lodgings of Governor Ogle, to wait upon him and the rest of the Commissioners for Maryland to Dinner, according to an Invitation given by the Gentlemen of Pensilvania the Day before; That the Commissioners on both sides, and this Deponent, dined together, at one Henry Newton's in the said Town of Newcastle; That, about an Hour after Dinner, Mr. Ogle, with the rest of Lord Baltimore's Commissioners, departed; That soon after, the Commissioners on the side of Pensilvania, with this Deponent, waited upon Mr. Ogle at his Lodgings, where were present two others of the Maryland Commissioners, viz. the Honourable Charles Calvert Esq; and Mr. Edmund Jennings; That Mr. Norris began to make some Apologies for the Commissioners of Pensilvania not meeting those of Maryland at the precise Hour agreed upon; That the said Mr. Jennings retired from the Company, with a View, as this Deponent supposes, that there should not be a Quorum of their side; The Reasons of the Failure of Meeting, at the precise Time appointed, were told; and that one chief Cause thereof was, that as the Commissioners of Maryland having, the Day before, objected something so very extraordinary, concerning the Circle about Newcastle, that those on the side of Pensilvania thought it proper to give their Answer thereto in Writing, the drawing up of which occasioned their not being precisely punctual to Time; That this Deponent having the Paper, containing those Answers, about him, signed by five of the Commissioners for Pensilvania, with a Copy thereof, he delivered it to Mr. Hamilton, who gave it into Mr. Ogle's Hands. That Mr. Ogle looked at the Beginning and the End of it, and offered it back again to Mr. Hamilton; but he refusing to take it, Mr. Ogle threw it carelesly down upon a Chair near him, and said that they were not then a Quorum, and therefore, could not enter upon any Business; That Mr. Hamilton said the Commissioners of Pensilvania were now ready and would meet those of Maryland, either in the Court-House,

or at any other place, where they would appoint: That Mr. Ogle insisted, that as they had failed in Point of Time in the Morning, he should not think himself obliged to appoint any other Meeting; and, as the Affair between the two Proprietors of Maryland and Pensilvania was of very great consequence, that if any Benefit should accrue to his Constituent by such Failure, that he could not answer it, either to Lord Baltimore or himself, if he did not take the Advantage of it. That, thereupon, Mr. Hamilton observed that, if he imagined the Failure of an Hour, or an Hour and a half, could be understood as a wilful Design to break up their Meeting, that he would most certainly find himself greatly mistaken; for that, in all Cases, where Commissioners are appointed to transact any Affairs, the Delay of an Hour, or two, or three, or more, is of little or no Signification; for that, though any one particular Hour might be appointed, yet, if they met at any time in that Day it would be sufficient, and that it was an adjudged Rule, in the Books of Law, that Commissioners on one side were obliged to wait for those of the other from Nine o'Clock in the Morning till Six in the Evening. Mr. Hamilton, likewise, observed that it was very extraordinary they should so rigidly insist upon the Failure of so small a Space of Time, when they very well knew, that at their former Meetings at Newtown, and the said Town of Newcastle, some time in October last, many Delays were occasioned on their side; at Newtown especially, that the Articles of Agreement were objected to, because some of Mr. Penn's Family did not sign them: That it was made appear, they were signed by all the necessary Persons concerned; and that the rest of the Commissioners were satisfied in that Point, when, at last, Mr. Ogle gave it up, but with a Reserve for that time only; and that, upon their meeting afterwards at Newcastle, pursuant to their Adjournment at Newtown, other Difficulties were started; For, notwithstanding that, in the Articles of Agreement, Recitals of all the Grants and Deeds necessary were made, yet, they insisted upon seeing the originals, in Compliance to which the Commissioners of Pensilvania sent up one of their Number to Philadelphia, to bring down the same, which occasioned a Delay of one Day, at least; That, when those Originals were produced, and found to be agreeable to the respective Recitements, they further insisted to have Copies thereof, or such Parts thereof as they thought necessary, which was likewise complied with: Mr. Hamilton further mentioned that Mr. Ogle might very well remember, that it was the Opinion of the Gentlemen of Pensilvania that a Clerk or Clerks should be appointed to take Minutes of the Proceedings of the Commissioners on both sides, that their Transactions might appear, which

the Gentlemen of Maryland would not agree to; That it was then proposed by the Commissioners of Pensilvania that each Side should take their own Minutes, and exchange them signed, but that was also refused on the side of Maryland: That, from such Proceedings, Mr. Hamilton said, he could not help observing that it appeared to him that the Gentlemen of Maryland were not inclined to execute the Articles with such Fairness, Candour and Dispatch as is therein recommended. Mr. Ogle replied that as he knew little or nothing of the Law, he desired to be excused from entering into an Argument with one of that Profession: A Meeting of the Commissioners being again pressed by those of Pensilvania, and refused on the side of Maryland, Mr. Charles read a Notice of Meeting at the Court-House of the said Town of Newcastle at Six of the Clock that Evening, which Mr. Ogle refused to take notice of, but it was left with him, and the Commissioners of Pensilvania attended at the said Court-House from Six of the Clock till some time after Eight, this Deponent being with them all the while; but as the Commissioners of Maryland did not come there, it was thought proper to give them fresh Notice of meeting on the Monday following, at Ten o'Clock in the Forenoon; and that the Deponent waited upon Mr. Ogle at his Lodgings, between the Hours of Nine and Ten in the Evening, and acquainted him that one of the Commissioners on the side of Pensilvania was there, with a Message to deliver him from the rest; That Mr. Ogle answered, it was an unseasonable Time, and would receive no Messages, that he did not choose to say an uncivil thing to any Gentleman, and therefore desired to be excused from admitting him; That though Mr. Ogle would not suffer that Commissioner to wait upon him, yet the Notice of Meeting, at Ten o'Clock, on the Monday following, as above mentioned, was (as this Deponent was informed) served upon four of the Commissioners for Maryland, that same Night, but, instead of paying any regard thereto, all the Commissioners for Maryland set out from Newcastle the next Day, being Sunday. This Deponent thinks proper to observe, that though what he has above deposed may not be delivered in the same Words, nor in the same Order, in which they passed; yet, that the several Depositions are strictly true, and as nearly in the same Words and Order as his Memory can furnish him with, and further this Deponent saith not. Sworn before the Mayor of Philadelphia the 26th of the same February 1732.

Mr. Hasell the Mayor of Philadelphia not only proves that Mr. Georges swore to the foregoing Affidavit before him, but he also adds, he believes the said Affidavit was writ by the said Georges, and it makes the Pensilvania Exhibit markt Q. q.

1732, *Feb.* 3.

The following is a very sensible and material Paper, which our Commissioners delivered to Mr. Ogle upon this Day, in Writing, in answer to the pretended Doubts about the Center and Dimensions of the Circle, viz.

The Commissioners on the Part of Maryland having made two Objections against running the Circle, or Part of a Circle, about the Town of Newcastle, as directed by the Agreement made between the Proprietaries of Pensilvania and Maryland. 1. For that there being no Center fixed, or agreed upon by the said Proprietors, from whence the said Circle shall be drawn, they conceive they have no Power to make a Center, and therefore are not warranted by their Commissions to run the said Circle. 2dly, For that the Deed of Bargain and Sale, or Feoffment, from the late Duke of York, to the late William Penn Esq; the elder, for the Town of Newcastle, and the Lands about the same, being expressed in these Words, to wit, All that the Town of Newcastle otherwise called Delaware, and all that Tract of Land lying within the Compass or Circle of twelve Miles about the same, scituate lying and being upon the River Delaware in America, the said Commissioners for Maryland do object, That the Circumference or Periphery of that Circle is to be twelve Miles, which they say will make a Diameter scarce four Miles, or at most, it will but make a Diameter of twelve Miles: so that the Radius of the Circle to be run by the present Agreement about the Town of Newcastle will be but six Miles at most, and that the Words in the Articles of Agreement and Commissions, which direct that the Circle shall be at the Distance of twelve English Statute Miles from the Town of Newcastle, are, either superfluous, or are contradictory to the Description in the Deed of Feoffment, and therefore, void in themselves. To which Objections, the Commissioners on the Part of Pensilvania, answer, that they conceive the Commissioners on both sides, being empowered and directed by their Commissions, in pursuance and in part performance of the said Articles of Agreement, to draw and mark out the said Circle mentioned in the Charter of Pensilvania and Deed of Bargain and Sale or Feoffment of Newcastle, or so much thereof as shall be requisite, at twelve Miles Distance from the Town of Newcastle, which twelve Miles shall be twelve English Statute Miles, and, to do every thing necessary for running the same accordingly, and that the Words in the said Deed, as well as the Words in the said Articles of Agreement and the several Commissions from the respective Proprietors to their Commissioners, contains such a Certainty, as will well warrant the Commissioners to proceed in drawing and marking out the said Circle, or so

much thereof as shall be thought requisite. As to the second Objection, The Commissioners of Pensilvania are of opinion, that it is not from the Words of the before mentioned Deed, only, that the Radius of the said Circle is to be judged of or measured, but, likewise, from the Charter of Pensilvania, and the Grant of the late Duke of York to William Penn Esq; the Elder, for that Tract of Land upon Delaware River and Bay, now called by the Names of Sussex, Kent, and Part of Newcastle County. And, if any Doubt could arise, upon the Words of the Deed of Bargain and Sale for the Town of Newcastle, &c. concerning the Radius of the Circle of twelve Miles about the said Town, we conceive it is fully explained, cleared up, and reduced to a Certainty, by the aforesaid Charter and Deeds; for, it is to be observed, that, as the Town of Newcastle and the twelve Miles round the same, was originally appropriated by the said late Duke of York for certain Purposes, before he granted the same to the said William Penn, so, King Charles the Second, when he granted the Province of Pensilvania, took care not to eneroach upon that Circle, but begins the Bounds of the said Province from twelve Miles distant Northward of Newcastle Town. Thus, by the King's Grant of the Province of Pensilvania, we see, that he understood the Periphery or Circumference of the Circle about the Town of Newcastle to be twelve Miles distant from the same. It is further observable that, by the Grant of the said late Duke of York to the said late William Penn the Elder, of that Tract of Land now containing Sussex, Kent and Part of Newcastle County, the said Duke, who was at the Time of making the said Grant, Owner of both the said Town of Newcastle and the twelve Miles round the same, and also of the said Tract of Land lying on the River and Bay of Delaware, understood the Circumference of the said Circle to be at the Distance of twelve Miles from the Town of Newcastle, and, accordingly, describes the Bounds of the said Tract of Land as lying on Delaware River and Bay, and beginning twelve Miles South from the Town of Newcastle and extending South to Cape Henlopen, &c. From all which, we conceive, it is most evident that the Circumference of the Circle about the Town of Newcastle is twelve Miles distance from the same, for so it appears King Charles the Second, who was the original Granter, understood it, when he bounded the Province of Pensilvania at the Distance of twelve Miles North of the Town of Newcastle: And the said late Duke of York, who was Owner of all the Land to the Southward of Pensilvania as far as Cape Henlopen, and had the unquestionable Right to declare the Meaning of his own Grant, he has declared how he understood the Extent of that Circle, by beginning his Grant of the Lands

lying on Delaware and to the Southward of the said Town of Newcastle at twelve Miles Distance from the same. But, were it possible, after Consideration had of the said Charter and Deeds, for any Person to be in doubt, about the Extent of the said Circle, or Part of the Circle, now to be markt out by the Commissioners, we, on the Part of Pensilvania, are clearly of opinion that the Proprietors of both Provinces, who are the sole Owners of all the Lands lying between the Bay of Chesapeake and the River Susquehanna to the Westward, and the Bay and River of Delaware to the Eastward, have, as they had an undoubted Right to do, in most full and express Terms, removed that Doubt, by the second Article of their Agreement, where they say, that there shall be the said Circle mentioned in the said Charter for Pensilvania and Deed of Bargain and Sale or Feoffment of Newcastle (or so much thereof as is requisite) drawn and marked out at the twelve Miles Distance from the Town of Newcastle, which twelve Miles shall be twelve English Statute Miles. And as to the Objection, that so much of this Article as directs the Circle to be at twelve Miles distance from the Town of Newcastle is superfluous, or contradictory to the Deeds of Feoffment aforesaid, and, therefore, void in itself, we do not conceive it deserves any other Answer than to say, that this Article is neither superfluous nor contradictory, but a plain Declaration of what has been always understood to be meant by twelve Miles about the Town of Newcastle; And that the Proprietors of Maryland and Pensilvania had, undoubtedly, a good Right to divide their own Lands in such manner as they thought fit. And they have, accordingly, agreed that the Circle about the Town of Newcastle shall be drawn and markt out at the Distance of twelve English Statute Miles from the said Town, and the Commissioners on the Part of Pensilvania are now ready, and offer themselves to proceed to the drawing and marking out the same accordingly.

Note.

My Lord Baltimore in the Schedule to his Answer, at Fol. 573, admits that the foregoing Paper was delivered to his Commissioners, at another time, viz. upon 4 September 1733.

The foregoing Paper is proved by Messieurs Logan, Preston, Steel and Taylor, and is the Pensilvania Exhibit markt E.

Note.

It comes out in Evidence, that there was one verbal Request, this Day, to meet before Dinner. and another verbal Request to meet, after Dinner, but, those being refused,

1732, Feb. 3.

A signed Notice, by four of our Commissioners, directed to

the Lord Baltimore's Commissioners; That the Commissioners having agreed to meet at Newcastle, at Ten, or Eleven, o'Clock in the Forenoon of the 3d Instant, but, by reason of Indisposition, a quorum of our Number not appearing at the precise Hour; We do now give you the Commissioners on the part of Maryland Notice, that we will meet you at the Court-house, in this Town of Newcastle, at Six o'Clock this Afternoon. This is proved by Messrs. Logan and Preston, and is the Pensilvania Exhibit B. No. 1.

This produced no Meeting, neither.

Feb. 3.

Another signed Notice, by four of our Commissioners, directed to Mr. Ogle, and which was served (tho' he refused to be seen) upon four others of the Maryland Commissioners, That since you have declined meeting us this Afternoon at the Court-house, pursuant to the Notice given you, we judge it necessary to give you further Notice, that we will continue here till Monday the 5th Currant, in order to meet you at Ten of the Clock in the Forenoon of that Day, at the said Court-house, there jointly to proceed to the Execution of our respective Commissions, which we on our parts have declared ourselves ready to do, as from the Paper signed by us, and this Day delivered by one of our Number into your Hands, may fully and clearly appear. This Paper is spoke to by Messrs. Logan and Preston, and is the Pensilvania Exhibit markt B. No. 2.

Instead of meeting on the Monday, the Maryland Commissioners left the Town, and went back to Maryland, on the Sunday.

Feb. 15.

Is the Date of Lord Baltimore's Letter to the Governor of Pensilvania, reviving the Meetings, and appointing one at Joppa; which we have particularly charged at Fol. 304, in our Bill; and the Defendant has expressly admitted it in Fol. 316. of his Answer, which we must refer to; for we have it not to produce, nor are we bound to produce it, it being my Lord's Letter to Major Gordon, who is proved to be dead.

Notwithstanding that Notice from my Lord Baltimore himself that the Commissioners should meet at Joppa on the 7th of May, we shall see what my Lord himself and his Commissioners did, in Maryland, in the meantime; he himself being then there.

For we have proved by the Reverend Mr. Hugh Jones of Maryland, a Copy of the following Letter which Governor Ogle wrote to him, and which he sent to another Person.

1732, *Mar.* 8.

To the Rev. Mr. Jones in Cecil County, These. Annapolis Mar. 8, 1732. Sir, I send you this, on purpose to desire you not to fail being here at the Meeting of our Assembly, having several Things to communicate to you in relation to his Lordships' Interest, which cannot well be brought into the Compass of a Letter; However, I can't, in the mean time help giving myself the Pleasure of acquainting you that we are not at all sorry at the unreasonable Behaviour of the Commissioners for Pensilvania, in refusing to run out the Circle about Newcastle, as mentioned in their pretended Deed of Feoffment; For, altho' that would be only at about two Miles Distance from Newcastle, yet, it is what I believe, they would be glad to get hereafter; my Lord having, now, the most reasonable Hopes that can be of getting every Inch of the three lower Counties, which are so indisputably his Right. This, to tell you my thoughts freely, will be the greatest Happiness that can be to the present Tenants, however they may have been deceived by artful People; His Lordship being determined to let such of them, as behave well to his Lordship, enjoy the Land they hold, without exacting any thing of them, either for arrears of Rent, or any other Cause whatsoever besides the ordinary Conditions of Plantations, which you know comes but to a Trifle. I am Sir Your assured Friend and humble Servant Sam. Ogle.

This Letter has the following Underwriting "I attest that this is a true Copy of a Letter lately sent, by Express, from his Excellency the Governor to me. H. Jones.

This Letter has an Endorsement thereon thus "To Mr. Lloyd! "Mar. 17, 1732. Sir, 'Tis a great Satisfaction to me, that my "Lord Baltimore will condescend to the Particulars of this "Letter; I communicate it to you, to shew any of your Friends "that may have any Interest therein, and am, Sir, Your's. H. "Jones.

The foregoing Copy of a Letter is proved by Hugh Jones Clerk of Maryland, and is the Pensilvania Exhibit in a marbled Cover, No. 2.

Note.

This was to draw off our Tenants, while my Lord himself had writ to appoint a new Meeting at Joppa, and the Original hereof was writ by his Governor and first Commissioner Mr. Ogle.

But, lest this should not be quite plain enough, nor quite publick enough, we have also proved the following printed Advertisement.

Mar. 21.

"Annapolis, Mar. 21, 1732. By Order of the Right Honourable the Lord Proprietor. To all Persons whom it may concern, All Takers-up of Land within the Province of Maryland, who may pretend to hold them by virtue of any Grants or Patents, not deriving the same from the present Proprietor or his Ancestors, will be intitled to no Benefit thereby, unless they make speedy Application to Matthew Tilghman Ward Esq; Agent for the Proprietor. Sign'd by Order, John Ross Dep. Agent.

This also is proved by Hugh Jones of Maryland Clerk, and is the Pensilvania Exhibit in a marbled Cover, markt No 1. and was, by my Lord's own Order, posted up on the Borders of the Three lower Counties.

So that, while my Lord, himself, had appointed the new Meetings of the Commissioners at Joppa, and was himself in Maryland, here were written, and printed, Invitations and Threats, to draw of our Tenants, and they were to apply to Mr. Ward, another of my Lord's Commissioners. And these last printed Papers are proved to have been stuck up on the Borders of the Three Lower Counties by my Lord Baltimore's own Orders.

1733, *Mar. 28.*

The Notice signed by all the Pensilvania Commissioners, and served personally upon six of Lord Baltimore's Commissioners in Maryland, viz.

Gentlemen. Five of us, the underwritten Commissioners appointed by virtue of a Commission from the Honourable the Proprietaries of Pensilvania, for executing certain Articles of Agreement concluded between them and the Right Honourable Charles Lord Baltimore, Proprietor of the Province of Maryland, touching the Limits of the said Provinces and Counties of Newcastle, Kent and Sussex on Delaware, having met the like Number of you, the Commissioners appointed by the said Lord Baltimore, at Newcastle, on the first Day of February last, pursuant to our former joint Adjournment, and continued together till the 3d Day of the same Month, when, from a pretended Failure by reason of a Quorum of us not appearing at the precise Hour in the Forenoon of that Day, to which we stood adjourned, you thought fit to withdraw yourselves from the Court-house of the said Town of Newcastle, the Place of our Meeting, and, notwithstanding you, and we, met together, several times, afterwards, in the same Day, yet, insisting on that supposed Failure, you refused, as Commissioners, to join with us, in the Execution of our respective Commissions, by which Refusal.

we were obliged to serve you with Notice to meet us the same Evening, at six o'Clock, at the Court-house of Newcastle aforesaid, which you neglecting to do, we, the same Evening, again, served a Quorum of you (Access being denied us, to others of your Number) with Notices to meet us at the Place aforesaid on Monday the 5th Day of the said Month; which, likewise, you thought fit so little to regard, that, leaving Newcastle the Day before, you again neglected to meet us at the Time and Place, by the said Notices appointed. But we the underwritten Commissioners, notwithstanding the Disregard shewed to our former Notices, being still willing to proceed on the Business which now lies before the Commissioners jointly, (viz.) the Execution of the second Article of the said Agreement, which follows in these Words. "That there shall be the said Circle, mentioned in the said Charter for Pensilvania, and Deed of Bargain and Sale or Feoffment of Newcastle (or so much thereof as is requisite) drawn and markt out at the 12 Miles Distance from the Town of Newcastle, which 12 Miles shall be 12 English Statute Miles") Do hereby give you, and each of you, Notice, That we, or a sufficient Quorum of us, will attend at the said Town of Newcastle on Delaware (which by the joint Consent of the Commissioners on both Sides, hath been acknowledged to be the only Place proper for beginning the Business immediately before us) on the 16th Day of April next ensuing, there to meet and join with you, agreeable to the Directions of our respective Commissions, in proceeding to draw and mark out the said Circle accordingly. Given under our Hands at Philadelphia the 28th Day of March 1733.

The foregoing Paper is proved by Messrs. Logan and Preston, who signed, and by William Biddle who serv'd it; and is the Pensilvania Exhibit markt B. No. 5.

May 7.

The written Question from the Maryland Commissioners, whether the Pensilvania Commissioners, would run out any Circle, other than at 12 Miles Distance? And the Pensilvania Answer, that they conceived themselves directed to run no other than that in the Articles, which they mention verbatim. This is proved by Messrs. Preston, Logan and Steel, and is exactly as set forth by the Schedule to the Defendant's Answer at Fol. 532. 533. The Original is Pensilvania Exhibit markt Letter H.

May 8.

The Pensilvania Commissioners written Proposal, and the Maryland Answer of this Date, are set forth in Fol. 536. of the Defendant's Answer. The Originals are proved by Messrs. Logan, Preston and Steele, and are the Pensilvania Exhibit markt I.

May 8.

The Maryland Commissioners written proposal and the Pensylvania Answer, of this Date, are set forth in 540. of the Defendants answer. The Originals are proved by Messrs. Logan, Preston and Steele, and are the Pensylvania Exhibit markt J.

May 9.

The written Minute of Adjournment from Joppa is set forth in the Defendant's Answer, Fol. 545. The Original is proved by Messrs. Logan, Preston and Steel, and is markt K.

May 26.

The written Minute of this Day is set forth in Fol. 550. of the Defendant's Answer. The Original is proved by Messrs. Logan, Preston and Steel, and is markt L.

Aug. 2.

An Order of the King in Council, made upon the Petition of the now Plaintiffs, John, Thomas and Richard Penn, and upon a Report from the Committee of Council dated the 1st of August; taking Notice that they had delivered to the Lords of Trade a Declaration under their Hands and Seals, in the usual Form, for saving the Right claimed by the Crown to the three Lower Counties; whereby his Majesty approved of the said Patrick Gordon to be Deputy-Governor of Pensylvania without Limitation of Time, and of the said Counties during his Pleasure only; provided he qualified himself according to Law, and gave 2000*l.* Security before the Lieutenant-Governor of Virginia for observing the Acts of Trade. This Exhibit is Co. Off. No 27.

NOTE—This Order of Council is also entred in Newcastle Records, No. 11. Fol. 102.

Sept. 3.

The Pensylvania Demand, of this Date, is set forth in the Defendant's Answer Fol. 553. The Original is proved by Messrs. Logan, Preston and Steel, and is Pensylvania Exhibit, Letter M.

Sept. 4.

The Maryland Answer thereto of this Date, is set forth in the Defendant's Answer Fol. 556. The Original is proved by Messrs. Logan, Preston and Steel, and is in Pensylvania Exhibits, Letter N.

Sept. 4.

The Pensylvania Paper of this Date, is set forth in the Defendant's Answer Fol. 562. The Original is proved by the same three, and is in the Pensylvania Exhibits, Letter O.

Sept. 5.

The Maryland Answer of this Date, is set forth in the Defend-

ant's Answer Fol. 588. The Original is proved by the same three, and is in the Pensilvania Exhibits, Letter P.

Sept. 6.

The Pensilvania Categorical Demand, that the others would run the Circle at 12 Miles Distance, or else declare they would not? The Copy is set forth in Defendant's Answer Fol. 584. The Original is proved by the same three, and is in Pensilvania Exhibits, Letter Q.

Sept. 6.

The Maryland Answer thereto, they cannot agree to that Circle. The Copy is set forth in Defendant's Answer Fol. 596. The Original is proved by the same three Persons, and is in Pensilvania Exhibits, Letter S.

Sept. 6.

The Maryland Demand, whether the Pensilvania Commissioners will run no other Circle? The Copy is set forth in Defendant's Answer Fol. 598. The Original is proved by the same three Persons, and is in the Pensilvania Exhibits, Letter R.

Sept. 6.

The Pensilvania Answer, that they can't agree to run any other. The Copy is set forth in the Defendant's Answer Fol. 599. The Original is proved by the same three Persons, and is in the Pensilvania Exhibits, Letter T.

Sept. 6.

The Minute of Adjournment to the 14th of November. The Copy thereof is set forth in the Defendant's Answer Fol. 601. and the Original is proved by the same three Persons, and is in the Pensilvania Exhibits, Letter U.

Nov. 14.

From the Newcastle Records, an Entry recorded there, of a Testimonial given by Mr. Gooch the Lieutenant-Governor of Virginia, under the Great Seal of that Colony, that Colonel Gordon had taken the Oaths, subscribed the Test, took the Oath of Office, and given 2000*l.* Bond to observe the Acts of Trade, before him. Newcastle Records, No 11. Fol. 103.

Nov. 16.

The Maryland Paper of Proposals at Newcastle, to go away to Cape Hinlopen to run the East and West Line there. The Copy is set forth in the Defendant's Answer, Fol. 606, and the Original is proved by Messrs. Logan, Preston and Steel, and is in the Pensilvania Exhibits, Letter W.

Nov. 17.

The Pensilvania long Answer thereto, recapitulating the several Instances of Chicanery which had been used by the Maryland Commissioners. The Copy is set forth in the Defendant's Answer Fol. 609. and the Original is proved by the same three Persons, and is in the Pensilvania Exhibits, Letter X.

Nov. 19.

The Maryland long Answer thereto, pretending that there were no Minutes taken to justify what was therein contained, (which was one of the Objections all along that they refused to let Minutes be taken) and telling them plainly they must either continue at Newcastle without running the Circle, or else depart without Adjournment. The Copy is set forth in the Defendant's Answer, only with some Mistakes in the Copying made by the Clerk, Fol. 635. and the Original is proved by the same three Persons, and is in the Pensilvania Exhibits markt Letter Y.

Nov. 20.

The Pensilvania long Reply thereto is set forth in the Defendant's Answer Fol. 671. The Original thereof is proved by the same three Persons, and is in the Pensilvania Exhibits markt Letter Z.

Nov. 22.

The Maryland Paper then delivered. It is set forth in the Defendant's Answer Fol. 703. And the Original thereof is proved by the same three Persons, and is in the Pensilvania Exhibits markt Letter Z *a*.

Nov. 23.

The Pensilvania Answer thereto is set forth in the Defendant's Answer Fol. 716. and the Original is proved by the same three Persons, and is in the Pensilvania Exhibits markt Letters Z *b*.

Nov. 24.

The Parting Minute, signed by the Commissioners on both sides, declaring their Difference in Judgment to be, whether the Circle was to be 2, or 12 Miles distant from Newcastle, and then breaking up without further Adjournment. The full Purport of this is set out in our own Bill Fol. 347. It is again set out, verbatim, at Fol. 338. in the Body of the Defendant's Answer, and also at Fol. 726. in the Schedule to his Answer. The Original is proved by Messrs. Logan and Preston, and is in the Pensilvania Exhibits markt Letters Z *c*.

Jan. 10.

A Report then made by all the seven Pensilvania Commissioners to their Proprietors, and then signed, and afterwards sworn and affirmed to by them, in Pensilvania, containing in it a Minute Relation of all that had past from day to day, between the Commissioners on both sides, and also containing Copys, at full length of all the foregoing Papers which past, between them; and which Paper (as some of those Commissioners are since dead) we have proved to have been signed and sworn to by all the seven Commissioners, by Messrs. Logan, Preston, Hamilton and Græme. It is, of itself, a large Book, under the Great Seal of Pensilvania, markt A.

But as others of the Commissioners are still living, and have, in this Cause, given Evidence to the same Facts, and proved the Copies of the same Papers exchanged between the Commissioner on each side, I would not again incumber you with that Heap of Matter.

Only this, That in Fol. 26. and 27. of this Report, they have inserted the Body of my Lord Baltimore's Letter of 15 Feb. to revive the Meetings of the Commissioners, and appointing the Meeting at Joppa for the 7th of May, of which at present we have no other Copy.

CHAP. XV. *From Christmas 1733, to the Time of filing the present Bill in June 1735.*

1734. *Aug. 8.*

The now Defendant's Petition to the King in Council, wherein he states the Charter for Maryland, and that his Ancestors, pursuant to the Design of the said Charter, with great Charge and Difficulty proceeded to cultivate and settle such Part of the Country so granted, as the Nature thereof would admit, intending, by Degrees, to make a compleat Settlement of the whole. "That it appears by an Order of Council of the 4th of "April 1638, that Captain William Clayborne, on the Behalf of "himself and Partners, having presented a Petition to his late "Majesty, King Charles the First, shewing that, by a Commis- "sion from his Majesty, they had planted upon an Island in "the Great Bay of Chesepeak in Virginia, named the Isle of "Kent, and others Places therein mentioned, and bestowed "great Charges thereon, and that the Lord Baltimore had ob- "tained a Patent from his said Majesty, comprehending the "said Island and Places, within the Limits thereof, they thereby "prayed a Grant of Confirmation of the said Island and "Places to the said Petitioners; and the Matter of the said

"Petition being referred to the then Lord Archbishop of Canterbury, the Lord Keeper, Lord Privy Seal, and others, and it "appearing that the said Isle of Kent was within the said Lord "Baltimore's Patent, and it appearing also, by an Order of "Council of the 3d of July 1633, that the Right and Title to "the said Isle of Kent, and other Places in Question, had been "resolved and declared absolutely to belong to the Lord Baltimore, their Lordships declared, that no Grant should pass "to the said Clayborne or any others of the said Isle of Kent, "or other Places within the said Patent." That the Petitioner conceives, from the said Order of Council, and from the Body of the Patent, (which hath no restrictive Words of *hactenus inculta*) that all Lands, within the Limits of the said Patent, did pass to the Lord Baltimore; but finds that, pursuant to an Order of Council dated the 31st May 1683, the Lords of the Committee for Trade and Plantations, amongst other Things, reported that the Land intended to be granted by the Lord Baltimore's Patent, was only Land uncultivated and inhabited by Savages, and that Part of the said Land called Delaware was inhabited by Christians, at and before the Date of the Patent, [Here, in pretending to set out this Order, he only leaves out these essential Words, viz. As it hath been ever since to this Time, and continued as a distinct Colony from that of Maryland] and were, therefore, of Opinion that the Tract of Land lying between the River and the Eastern Sea on the one Side, and Chesapeake Bay on the other, should be divide into equal Parts, by a Line from the Latitude of Cape Hinlopen to the 40th Degree of Northern Latitude, and that one Half thereof, lying towards the Bay of Delaware and the Eastern Sea, should be adjudged to belong to his then Majesty, and that the other Half should remain to the Lord Baltimore, as comprized within his Charter, which was accordingly ordered by his said Majesty King James the Second by Order of Council of 7th November 1685. But the Petitioner shews, that if any Part of the said Tract of Land mentioned in the said Report was inhabited at the Time of the said Patent, by any Christians, yet, they were not Subjects of the Crown of England, but Swedes and Dutchmen, or the Subjects of Foreign Nations. That, as the whole of that Part of the said Peninsula is plainly described within the Limits of the said Grant to the Petitioners's said Ancestors under whom he claims, so he conceives the same was intended to pass, and did pass, by the said Charter: in regard the chief Design thereof was to enlarge and extend the English Empire and Dominion, and, therefore, in the Body of the said Charter all that Part of the said Peninsula, comprized within the Limits therein delineated, is granted, without any Qualification or Restriction.

tion, of the said Words *hactenus inculta* mentioned in the Recital of the said Charter. That, altho' the said Order of King James cannot legally infringe the Rights of the said Charter, yet, the same may hereafter create Doubts, and occasion the Petitioner's Right, to the Lands therein mentioned to be drawn in question, and thereby create great Expence to the Petitioner; but the Petitioner prays the King not to interpret the said Words *hactenus inculta*, in a Sense exclusive of any Part of the said Peninsula lying within the Limits of the said Charter, altho' some very small Parts thereof should, at the Date thereof, happen to have been inhabited by the Subjects of Foreign Powers; and that, in regard the Petitioner's Ancestors had been at great Expence and Hazard, to settle and plant that Part of the said Peninsula, described within the Limits of the said Charter, and to extend the Empire and Dominion of the Crown of England, agreeable to the Royal Intention, as expressed in the said Charter. He prays that the King would, by a further Charter or Letters Patent, confirm unto him and his Heirs and Assigns the whole of such Part of the said Peninsula as is contained within the Limits of the said Charter, notwithstanding the said Words of *hactenus inculta*, in the Recital of the said former Charter or Letters Patent inserted. Co. Off. No. 28.

Note.

You'll observe there is not a Syllable of Mention made in this Petition of the Province of Pensilvania, or of the Proprietors of it, or of the three lower Counties. (which are not once named) or of the long Possession and Improvement made thereon, or of the Articles of Agreement which he had entred into; but he, by this Petition, presented in a few Days after a Second of the Plaintiffs was gone abroad, falsely sets up the pretended forged Order of 4 April 1638, drops every material word in the Final Order made in 1685. and petitions, behind the Plaintiffs Backs, upon these Falsehoods and gross Concealments, for a Grant to himself of those three lower Counties which he had already conveyed and covenanted to make further Assurance of to the Plaintiffs; and, their Interest whereto, he had covenanted to support and assist, by all the Means in his Power. But this is like every other Part of his Proceedings.

1734, Aug. 8.

By Order in Council the foregoing Petition was referred to the Lords of Trade to examine the Matters and Facts contained therein, and report the same, together with their Opinion, thereupon, to his Majesty. Co. Off. No. 29.

When this Petition was presented Mr. John Penn was, a few

Days before only, gone to Pensilvania; Mr. Thomas Penn the second Brother, had been there constantly for two Years before, immediately after executing the Agreement; and there was none of them in Europe but Mr. Richard Penn, the youngest Brother, who was but just come of Age, and knew nothing of the Matter.

There was no Notice of this Petition given, even to him, but the Lords of Trade by their Secretary, sent a Sort of Notice of this Petition to Mr. Paris, who on the 17th of October brought him down to the Lords of Trade.

Dec. 19.

The now Plaintiff Richard Penn presented a Petition to the King in Council in behalf of himself and his two elder Brothers, then in Pensilvania setting forth what the former Lord Baltimore had petitioned for, and the Crown had granted to him, in 1632; That that Province of Maryland was evidently known to produce to the Lord Baltimore a very great yearly Profit, and was, by much, the most beneficial Grant in any Subject's Hands in America; That at, and long before, the Grant to Lord Baltimore, the Eastern Side of the Peninsula had been possest, and was held, by the Swedes and Dutch, as had been manifested and determined by many Orders, made after the fullest Hearings and Examinations in Council; and those Lands were, long after that Grant, taken, and afterwards confirmed by Treaties, from the Dutch; That on 4 March 1680, King Charles made the Grant of Pensilvania; and in 1682, the Duke of York conveyed the three lower Counties, which lay contiguous to Pensilvania, and on the Eastern Side of the said Peninsula, to the Petitioner's Father, with Covenants for further Assurance; and the Duke had, for a long time, been in full Possession of the same under Grants from the Crown; and had exercised, by his Officers, all Sorts of Acts of Ownership, Proprietorship and Government therein; That there had been, soon after those last Grants, such a Contest in 1683, 84 and 85, and such Determination made; which Order of 1685 the Lord Baltimore had, several Times since, petitioned against; suggesting that it had been made *ex parte*, or that he had not been heard thereto; but, upon Examinations into such Suggestions, they likewise have been declared to be untrue, and the said Order has thereupon been repeatedly confirmed by subsequent Orders in Council in 1708 and 1709. That the Lord Baltimore hath greatly extended his true Bounds, Northwards, beyond the Beginning of the 40th Degree, as known and understood at the Time of his Grant, but nevertheless, the same do not extend to include the 3 lower Counties, nor do include above a very small Part of one of the said Counties. That, after the said Order in Council was made,

the Petitioner's Father, fairly and for valuable Considerations, purchased the Lands, which had been so granted to him as aforesaid, from the Indian Natives in those Parts, and sold great Parts of his Family Inheritance, in England and Ireland, (which is of above 1500*l.* a Year) and has constantly possest and cleared, settled, peopled and cultivated these Tracts, so granted him; insomuch, and to so great a Degree, that the same, altogether, make, without Exception, the most flourishing Colony in America for its Age; the Number of Inhabitants in the 3 lower Counties only, being at least 70,000 Souls. That the Petitioner's Father had done this, in the Space of about 50 Years, without one Penny Charge to the Crown or Publick, and at his own sole, but very great, Expence; having been forced, in order to accomplish the same, to mortgage the very Lands granted to him, besides selling his Family Estate, and to contract other great Debts, many of which are to this Hour unpaid, and for some of which he lay in Prison a considerable Time; and the Petitioner's Father, or his Family, have never received any Sort of Benefit to themselves, from this Grant, nor from his Father's great Labours, Toil, Hazard, and Expence, but are, as yet, many Thousands of Pounds the worse for the same. That as the Bounds between Maryland and the 3 lower Counties had not been exactly delineated and marked out, neither the Petitioners Father, nor themselves, have been able to raise or receive the Quit Rents out of the lower Counties, the Lord Baltimore still making some Pretensions to Land there, whereby the Petitioners have been hindered from making even further Improvements, and also from receiving some small Fruit and Benefit from this great Undertaking. That in 1731, the present Lord Baltimore drew out, with his own Hand, and offered to the Petitioners his own Proposals for an Agreement, in order to accomodate all Differences, and to settle the Bounds between Maryland and Pensilvania, and the three lower Counties; the first Clause whereof was in the Words following, "There shall be a Circle of 12 Miles Distance drawn from New-castle." That the said Lord Baltimore, by those Proposals, insisted to extend and stretch his Country, on the North Part, towards and into the Province of Pensilvania; and, on the East Part, towards the 3 lower Counties also, in a manner to which the Petitioners conceived he was no way intitled; but, to put an end to all manner of Differences and Disputes, and that the Petitioners might begin to reap some small benefit, they agreed to every one of Lord Baltimore's own Proposals in the manner he himself had offered them. And his own Plan of the Country in Question was engraved by his own Mathematician, and was printed on the side of the Articles of Agree-

ment; which Articles were, during 10 Month's Time, under the Consideration of his own Counsel, Mathematician, Solicitor, and other Agents, and were at last executed by the Lord, Baltimore and the Petitioners on the 10th of May 1732. That those Articles contained the fullest, plainest and clearest Directions for the actual running and marking out the dividing Lines, and also contained Renunciations and Releases, in Fee, from each of the Parties, to the other, of the Lands on the respective sides of the dividing Lines (which Lines were markt out on the Map in the very Margin of the Articles) and of all their Claims and Interests therein and thereto, and more particularly the Lord Baltimore himself conveyed thereby, to the Petitioners, the said three lower Counties; and one particular Clause was comprised in the said Instruments, in the following express Terms "That there shall be the said Circle, mentioned "in the said Charter for Pensilvania, and Deed of Bargain and "Sale or Feoffment of Newcastle, or so much thereof as is requisite, drawn and markt out at the 12 Miles Distance from "the Town of Newcastle, which 12 Miles shall be 12 English "Statute Miles." And the Lord Baltimore covenanted for further Assurance and that he would use all friendly Means and Offices, to the utmost of his Power, to assist and support that Agreement, and the Rights, Interests and Pretentions of the Petitioners by virtue thereof. That the Petitioners had good reason to hope, when they had concluded that Agreement with the Lord Baltimore, at his own Request, and upon his own Terms also, that they should have enjoyed the Benefit of so much Labour and Expence, And the Lord Baltimore and the Petitioners executed Commissions, to 7 Commissioners of each side, to mark and run out the Lines, described and mentioned in the Articles. And the Petitioner Thomas Penn went to Pensilvania, and, some time after, the Lord Baltimore went to the Province of Maryland. That, before his Lordship's Arrival there, the Commissioners, on both sides, had had several Meetings to run out the Lines, and the first thing in course to be done, and the first thing directed by the Articles to be Performed, being to mark out the Circle round the Town of Newcastle, the Lord Baltimore's Commissioners, most surprisingly, insisted to run a Circle not 12 Miles distant from Newcastle, as was agreed in express Terms, but something less than 2 Miles distant therefrom, declaring that they understood the Articles to mean a Circle whose Periphery was only 12 Miles, the Diameter of which would be less than 4, and consequently it could not be 12 Miles distant, but something less than two Miles distant, from Newcastle; nor would they seem to understand the Words of the Articles in any other sense, unless the Lord Baltimore

himself should certify them to the contrary. That, as his Lordship was expected in Maryland in some few Months, the Petitioners Commissioners readily agreed to adjourn the Proceeding till he should arrive that he might explain to his own Commissioners whether the Words of the Articles [of 12 Miles Distance from the Town] meant only two Miles Distance, or not: not in the least doubting but his Lordship, who had so earnestly pressed and obtained that Agreement from the Petitioners, would have instantly set his Commissioners right in their pretended Misapprehension. But, after his Lordship's Arrival, his Commissioners still refused to mark out any other Circle than that they had so contended for, although his Lordship was several Months in Maryland during their Meetings, and thereupon the Lines were not actually markt out, which was occasioned purely and simply by the Misapprehension, or pretended Misapprehension, of the Lord Baltimore's Commissioners, of those plain words, and not from any other Cause whatever.—That the Lord Baltimore returned to England, and the Petitioner John Penn had occasion to go to Pensilvania, (the Petitioners' Affairs there being in a very indifferent Situation, for want of the said Lines being run out. That, in a very short time after that the said John Penn (who is the eldest brother, and had all the Papers relating to this affair in his Custody, and had been most conversant therein) was gone for Pensilvania, the Lord Baltimore presented a Petition to his Majesty on the 8th of August last, without so much as naming, or taking the least notice of the Petitioners, or of his own solemn Agreement and Conveyance, but setting forth the Grant in 1632, and setting forth some other Matters relating to an Island called Kent (which no manner of way relate to the matter in Question) and partially reciting the Order of Council of November 1685, and containing an Allegation, that, if any Part of the Tract mentioned in that Order was inhabited at the time of the Grant to the Lord Baltimore, by any Christians (which the Petitioner seems to doubt, tho' so clearly and fully established) yet, that they were not Subjects of England, but of Foreign Nation, and therefore, as the whole Description of that Part of the Peninsula, in the granting Part of the Patent, did not, a second time, contain the Qualification or Restriction of *Hactenus inculta* mentioned in the Recital of the Patent, he, by his Petition, behind the Petitioners Backs, prayed that his Majesty would, by a further Charter, confirm to him the said Lord Baltimore his Heirs and Assigns, the whole of such Part of the Peninsula as was contained within the Limits of the said Charter, notwithstanding the Restriction in the Recital: Thereby, as the Lord Baltimore expects, and has in explicit Terms ac-

knowledge'd, to make a subsequent Grant to Lord Baltimore of these very Lands which he had so lately, and after so much Advise'ment, convey'd to the Petitioners, which is what the Petitioners could not have expected. That, throughout the Lord Baltimore's whole Petition, there's nothing which informs his Majesty of the Length of the Petitioners Possession, of the very great Improvements made by their Father (to his own and Family's Ruin) of the Agreement so solemnly and so lately entred into between the Lord Baltimore and the Petitioners, or of the Conveyance which himself had so lately made to the Petitioners of the three lower Counties (and which Matters the Petitioners conceive might have been very proper for his Majesty's Information) but, on the contrary, every thing tending thereto is dropt and concealed, and upon the Face of that Petition it might seem as if the Lord Baltimore was petitioning his Majesty only for some small trifling Tract of Land, which was neither claimed, possest or improved by any Person in the World. That his Majesty having been pleased to refer the said Petition to the Consideration of the Lords for Trade, their Lordships, in the Course of their Office knew of the Petitioners Possession and Claim, and from their great Justice it was, that the Petitioner Richard Penn received (about the 17th of October 1734) the first notice that any such Petition was depending. That the said Petitioner, without the most material Papers, or any Instructions, having lost the Assistance of his former Counsel, did get a new Counsel, who had never been acquainted with this very intricate Affair, to attend the Lords for Trade and Plantations upon the 21st of October last, when a first Hearing was had, and another appointed for the 20th Day of December now next, at which former Hearing it was insisted by the Lord Baltimore's Counsel, that if your Petitioners should not shew a clear legal Title to the Lands prayed for, that your Majesty might be advised to make a Grant now, as prayed, to the Lord Baltimore, which (as was pretended) could not invalidate the Right of your Petitioners, if any they had; but the Petitioners humbly apprehend, that such a Grant might create very great Disorders and Inconveniencies, and would raise the greatest Trouble and Disputes imaginable, and the rather from the Difficulty of settling a proper Jurisdiction in that Country to try the Rights of the Parties. That the Petitioner Richard Penn is interested but a small matter, in proportion to his two elder Brothers, in the Lands in question, and they, alone, have always had the Custody of the Deeds and Papers relating to this Dispute (which has depended now above 50 Years, but which it was hoped was ended by the Agreement in 1732) and have had the Management of the Affair; and the

present Petitioner has not intermeddled, or been acquainted therewith, and is therefore in a most defenceless State, now in their Absence. That the Petitioners Interests, and also those of all the Inhabitants in the three lower Counties, who hold by Titles derived from the Petitioners Father, and who have laid out their whole Substance in improving particular Parcels there, would be affected, by granting the Prayer of the Lord Baltimore's Petition, and the Petitioner prays Leave to inform his Majesty, that many Thousands of the Inhabitants in the said lower Counties are of the People called Quakers, who have ever behaved as loyal and faithful Subjects, and who, or their Ancestors, retired thither to settle in a Place where they have ever enjoyed Freedom of Conscience, and who might be deeply affected, in their Temporal and Religious Rights, both, if now to be put under another Government. That, from the first Notice the Petitioner Richard Penn hath had of the Lord Baltimore's Petition, no Opportunity (in regard of the Season of the Year) hath offered, of informing the two other Brothers in Pensilvania thereof. That his Majesty has not hitherto been strict upon his Subjects Titles in America, where a long Possession and real Improvement has been made, and the Petitioners hoped, that their very long Possession, and very great Improvement, added to the good Title they have will induce his Majesty to quiet them in their Possession. Therefore pray, that they may not, upon the Petition of the Lord Baltimore, be drawn (especially at so great a Surprise, and in such an uncommon Case) to set forth their Right to their antient Possession, and that his Majesty would not be pleased, at the Lord Baltimore's Request, who has so lately conveyed these Lands to the Petitioners, to strip the Petitioners (who have not hitherto received any Benefit from the said Grant) to give the Fruit of their great Labour, Hazard and Expence, to the Lord Baltimore (who has already so very beneficial a Grant) and that his Majesty will not be pleased to grant the Prayer of the said Lord Baltimore's Petition, but to dismiss the same, and to confirm the Petitioners Possession and Title, agreeable to the Limits in the said Deeds of May 1732, between the Lord Baltimore and the Petitioners, and to indulge the Petitioners with a reasonable Time to be heard hereon, and to grant the Petitioners all other Relief in the Premises. Co. Off. No. 30.

1734, Dec. 19.

By Order in Council, made upon reading this Petition, it was referred to the Lords of the Committee of Council to consider the same, and report their Opinion thereupon to his Majesty. Co. Off. No 31.

It is very true, that we did try to get our foregoing Petition also referred down to the Lords of Trade; but, as it came in so late, the Lords of the Council would not refer it thither; Wherefore, and as the younger Brother, in truth, knew nothing of this old Affair, we resolved to let the Board of Trade (whose Inclinations we could very well guess at) make their Report *ex parte*, upon my Lord Baltimore's Petition: And accordingly, they made just such a Report thereon as was expected.

Jan. 16.

Report from the Lords of Trade to the King, That they had considered Lord Baltimore's Petition, and acquaint his Majesty, that the Lands in Question, commonly called the three lower Counties on Delaware River, supposed to be excepted by the Words *Hactenus inculta*, appear to them to be included in the Limits granted by King Charles the First to the Lord Baltimore's Ancestors, but they have been in the Possession of the Penn Family for several Years, which made it proper for us to communicate the Purport of Lord Baltimore's Petition, and of his Majesty's Order thereupon, to the Agent for Messieurs John, Thomas and Richard Penn the present Proprietors of Pensilvania, that they might have an Opportunity of laying before us what they should think proper in relation to this Petition, and to their Title to the said Lands.* And we have been frequently attended by the said Agent, and by Mr. Richard Penn, one of the said Proprietors, upon this Subject, who promised, from time to time, to lay an Account of their Title before us; but, after having kept us in Expectation thereof, for several Months, they, at last, refused to proceed therein, whereby we are disabled from offering anything to your Majesty, relating to their Claim, except what we find by our Books, namely, that, for sometimes past, when any of their Family, Proprietors of Pensilvania, have nominated a Person for the Approbation of the Crown to be Deputy Governor of that Province, and of the said three lower Counties, they have given Declarations, under their Hands and Seals, which are extant in our Office from the Year 1702, to the last Nomination in 1733, whereby they acknowledge and agree that the said Approbation and Allowance shall not be construed in any manner to diminish or set aside the Right claimed by the Crown to the said three lower Counties. Upon their Refusal to proceed herein, we thought it our Duty to examine the Facts set forth in the Lord

*Mr. Paris, in fact, was not Agent for Mr. Penns, nor Solicitor for them, neither; though the Lords of Trade called him so, to warrant their own Proceeding without sending any Copy of the Petition to the Persons it really concerned.

Baltimore's Petition, and the Equity alledged by him as a Ground for his Hopes of your Majesty's favour in this Case. Whereupon we beg leave to acquaint your Majesty, that we find the Lord Baltimore's Original Patent bears Date the 20th of June 1632 and there is no room to doubt, that the Lands in Question are comprised within the Limits described in that Grant. And, with regard to the Interpretation of the Words *Hactenus inculta*, we have examined the antient Records of our Office,† and find by an Order of Council dated the 4th of April 1638, which recites the Purport of a former Order dated the 3d of July 1633, that one Captain William Claybourne having, in behalf of himself and Partners, set forth in a Petition to the King, that divers Years past they had discovered and planted upon an Island in the great Bay of Chesapeak in Virginia, which they had named the Isle of Kent, and that they had likewise settled another Plantation, upon the Mouth of a River, at the bottom of the said Bay in the Sasquehannaugh Country, and that the Lord Baltimore, taking notice of the great Benefit that was likely to arise to them thereby, had obtained a Patent from his Majesty, comprehending the said Island within the Limits thereof; upon which he besought his Majesty to grant him a Patent, under the Great Seal, for the quiet keeping, enjoying and governing of the said Island, Plantations, and People, &c. Whereupon all the Parties having been fully heard, we find the Sense of the Council expressed in the following Words, "That, upon what then appeared to them, and also "upon Consideration of a former Order of that Board, dated "July 3d 1633, wherein it appeared that the Difference now in "Question, being then controverted, the Lord Baltimore was "left to the Right of his Patent, and the Petitioners to the "Course of Law, their Lordships, having resolved and declared "as abovesaid, the Right and Title to the said Isle of Kent and "other Places in Question to be absolutely belonging to the "Lord Baltimore, and that no Plantation or Trade with the "Indians ought to be, within the Precincts of his Patent, without Licence from him, did, therefore, likewise think fit and "declare, that no Grant from his Majesty should pass to the "said Cleyborn, or any others, of the said Isle of Kent, or other "Parts or Places within the said Patent, whereof his Majesty's "Attorney and Sollicitor General are hereby prayed to take "notice." But we find that, upon a Dispute, betwixt the Lord Baltimore and the Duke of York (for whom Mr. William Penn was then Agent) concerning a Tract of Land in America, com-

†They have no Record, nothing but an unauthentick Copy, of this pretended Order.

monly called Delaware, wherein we conceive the said three lower Counties to be comprized, the Lords of the Committee for Trade and Plantations reported their Opinion, in May 1683, that the Land intended to be granted by the Lord Baltimore's Patent, was only Land uncultivated and inhabited by Savages, and that the Land, then in Dispute, was inhabited and planted by Christians, at and before the Date of Lord Baltimore's Patent,* whereupon they proposed that the Land, lying between the River and Bay of Delaware, and the Eastern Sea, on the one side, and the Chesapeak, on the other, should be divided into two equal Parts, by a Line from the Latitude of Cape Hinlopen, to the 40th Degree of Northern Latitude, and that one half thereof, lying towards the Bay of Delaware and the Eastern Sea, be adjudged to belong to his Majesty, and the other half to the Lord Baltimore, as comprized within his Charter. Soon after King James the Second's Accession to the Crown, that is to say, in 1685, this Report was ordered to be carried into Execution, and was confirmed by the late Queen in 1709. Whereupon, as the Sense of the Crown and the Lords of the Council, in these several Decisions, seems to have been governed by the Acceptation of the Purport of the Words *Hactenus inculta*, we beg leave to observe to your Majesty, that notwithstanding these Words are in the Preamble, yet they are not inserted by way of Restriction in the Body or Granting Part of Lord Baltimore's Charter, and as the Authorities seem to us to be equal with regard to the Interpretation hitherto given them, we must humbly submit it to your Majesty, whether the Sense in which they were understood by the Privy Council in 1633 and 1638, being so soon after the Date of Lord Baltimore's Patent, when the real Intention of the Crown in that Grant might have been more clearly known to the Lords of the Council, or the later Decision thereupon, when this Matter was again made the Subject of an Enquiry in Council, so long afterwards as 1683, and 1685, should have the Preference?† Thus much hath occurred to us upon the Subject of Lord Baltimore's Pretensions to the Lands petitioned for, and we cannot enter into any Examination of the Claim of the Penn Family, because they have declined to proceed therein before us. But, if it should be determined that the Right to the Lands in Question still remains in the Crown, we humbly beg leave to offer our Opinion, that the Lord Baltimore hath very just Pretensions to your Majesty's Favour, in Consideration of the great Sums of Money that have been expended by his Ancestors, in settling the Prov-

*Here they drop the very Heart and Essence of the real Order.

†Ballancing a Fiction in 1638, against a most solemn Reality in 1685.

ince of Maryland, and in bringing the Cultivation of Tobacco to Perfection there, whereby the Trade and Revenue of this Kingdom have gained, and do daily receive very great Augmentations. But to whomsoever your Majesty shall be pleased to grant the said Lands, if still remaining in the Crown, in our humble Opinion proper Care should be taken to preserve the Inhabitants settled there, in the full Possession of all their Religious and Civil Rights. All which is most humbly submitted. Co. Off. No. 32.

1735, *May* 10.

A Report from the Committee of Council, made upon considering the Report made by the Lords of Trade, upon the Petition of Charles Lord Baltimore, praying for a Grant of Confirmation of such Part of a Peninsula in America, as is contained within the Limits of the Charter, granted to his Ancestor, in the Reign of King Charles the First, notwithstanding the Words *Hactenus inculta*, which are inserted in the Recital of the said Charter; and also made, upon two Petitions, the one in the Name of Richard Penn Esq; the youngest surviving Son of William Penn Esq; deceased, in Behalf of himself and his two elder Brothers John and Thomas Penn Esqs; now in Pensilvania, setting forth their Right to the three Lower Counties of Newcastle, Kent and Sussex, lying within, and contiguous to, the said Peninsula, and therefore praying to be heard against the confirming the said Peninsula, to the Lord Baltimore; And the other, in the Name of the People called Quakers, in behalf of several Thousand Families of Quakers, Inhabitants of the said three Lower Counties, praying also to be heard against the confirming the said Lands to the Lord Baltimore: The Lords of the Committee, this Day, took the said Report and Petitions into their Consideration, and were attended by Council, as well for the Lord Baltimore, as the other Petitioners, and it appearing that on the 10th of May 1732, Articles of Agreement had been entred into, between the Lord Baltimore and the said John, Thomas and Richard Penn, for adjusting the Boundaries of the Lands granted to them, by their respective Charters, which Articles had not been carried into execution, within the Time thereby limited, But, notwithstanding such Lapse of Time, the Validity of the said Articles being insisted on, by and on behalf of the said John, Thomas and Richard Penn. The Lords of the Committee do agree humbly to report to your Majesty, as their Opinion, that the Consideration of the said Report and Petitions should be adjourned, until the End of Michaelmas Term next, in order to give an Opportunity to the said John, Thomas, and Richard Penn, to proceed in a

Court of Equity, to obtain Relief upon the said Articles of Agreement, so insisted upon by them, according as they shall be advised; and that after the expiration of the said Time, either Party should be at liberty to apply to the Committee of Council for Plantation Affairs, as the Nature of the Case may require. Co. Off. No. 33.

May 16.

An Order of the King in Council approving the said Report and ordering that the Consideration of the said Report and Petitions, be adjourned, until the End of Michaelmas Term next, that the said John, Thomas and Richard Penn may have an Opportunity to proceed in a Court of Equity, to obtain Relief upon the said Articles so insisted upon by them, according as they shall be advised; And his Majesty doth hereby further order, that after the Expiration of the said Time, either Party be at liberty to apply, to the Committee of Council for Plantation Affairs, as the Nature of the Case may require. Whereof all Persons whom it may concern are to take notice, and govern themselves accordingly. Co. Off. No. 33.

June 21.

The now Plaintiffs did, in pursuance of the last Order, file their present Bill against the Defendant.

CHAP. XVI. *Of Matters which have past since the Filing our present Bill.*

June 24.

By Indenture of Release Samuel Preston and James Logan, the two Survivors of the Twelve Trustees to whom Proprietary Penn had by his Will devised all his Lands in America upon Trust, conveyed unto John Penn and Thomas Penn and their Heirs, all the Lands, &c. in Pensilvania and in the three lower Counties, &c. To hold one Moyety thereof to the Use of John Penn in Fee, To hold one Quarter part to the Use of Thomas Penn in Fee. and to hold the other Quarter part to the Use of Richard Penn in Fee. Parchment Deed proved by Daniel Flexney.

1737, *March 26.*

By Indenture of Release enrolled in Chancery, Alexander Forbes and William Penn the Grandson, conveyed the Mortgage which had been made to the said William Penn of Pensilvania, for securing the 5000*l.* and Interest, unto Thomas Jackson in Fee. Parchment Deed proved by Paris.

March 26.

By a Declaration of Trust enrolled in Chancery dated the

same Day, Thomas Jackson declared that one Moyety of the Money, paid to buy up that Mortgage, was the Money of John Penn, and that the said John Penn was interested one Moyety in that Conveyance from Forbes and William Penn, and should have a Conveyance thereof. Parchment Deed proved by Paris, *March 28.*

An Entry of the Commission granted by John, Thomas and Richard Penn to Colonel George Thomas to be Deputy Governor of Pensilvania and the three Lower Counties in. Newcastle Records. No. 11. Fol. 104.

April 21.

The now Defendant presented a Petition to the King in Council, setting forth his Charter, and that he was indisputably intitled to the Tract called Maryland, and likewise to another Tract called the three Lower Counties, which lye contiguous to Maryland on one side, and to Pensilvania on the other but are really (as he said) within the Bounds of his Charter, and therefore he apprehends they are Part of his Province, and as such belonging to him. That in King James the Second's Time, Advantage was taken of the Expression *Hactenus inculta* and, under that Suggestion, the Crown took the three Lower Counties into their own Possession; That the said three Lower Counties, being then-incapable to support a separate Governor, and the Petitioners Ancestors being soon after under some legal Disabilities [Roman Catholicks] the Crown permitted the same Person who was Governor of Pensilvania to act as Governor likewise over the three Lower Counties; but, to evidence that this was not done as considering them as Part of Pensilvania, the Proprietors have, always, signed a Declaration that it should not prejudice the Right claimed by the Crown to the said three Lower Counties; [He forgets that we held the Government the first twenty Years without any such Declaration.] That the People of Pensilvania, in settling, have made great Encroachments on Maryland; To prevent which he, in 1723, made such an Agreement; but they still made Encroachments; to prevent which, he, in 1732, on the Application and Request of the Proprietors of Pensilvania, entred into another Agreement with them; but that Agreement was to be void if the Lines were not run by 25 December 1733; which Time being expired, and the Lines not run, he's advised the said Agreement is null and void; That he has since found he was most grossly deceived and imposed upon, by the Proprietors of Pensilvania, in making that Agreement: insomuch that, if it had not been void by Lapse of Time, he's advised he should have been relieved against the

same, on the Head of Fraud and Imposition; That he presented a former Petition, to have a confirmatory Grant of the three Lower Counties, and that Petition having been referred to the Lords of Trade, and they having reported thereon, and that Report coming on to be heard, together with another Petition on the part of the Pensilvania Proprietors, and they insisting on the said Agreement, as subsisting and in full force, the Lords suspended proceeding on his Petition, till the Validity of the Articles should be determined, on such Bill to be brought by the Proprietors of Pensilvania, and a Bill has been accordingly filed, for a specifick Performance of the Articles, and is now depending. 1. That, during this Dispute, the Sheriff of Pensilvania with 40 Men in Arms entred the Province of Maryland, and attackt and took Prisoner Captain Thomas Cressap, one of his Tenants, in Cressap's own House, and carried him Prisoner to Pensilvania. [Note this Fellow had murdered several Persons, was got up very far North in the Country, and, to screen himself, said he was there in Maryland, and he was under Lord Baltimore's Jurisdiction, and my Lord thought proper to patronize and support the Fellow.] 2. That the Proprietors of Pensilvania had lately petitioned his Majesty to approve of Colonel Thomas to be Deputy Governor of Pensilvania and the said three Counties: That he had no Objections to Colonel Thomas's Person, but as the Proprietors of Pensilvania had acted so, in regard to Captain Cressap, and had no legal Right or Title to the said three lower Counties, He prayed two several things, (which were, at several and distinct times, considered) viz. That no Person should be appointed Deputy Governor of the lower Counties upon the Recommendation of the Proprietors of Pensilvania, but that, until the Dispute between them and him touching the Validity of the Articles should be determined, some indiffernt Person might be appointed to have the Command over the said three lower Counties, by Commission from the King, or, at least, that Colonel Thomas, if to be appointed Governor of the three lower Counties, should be so appointed by Commission directly from his Majesty, and not by Commission from the Pensilvania Proprietors. And he likewise prayed that Directions might be given for quieting the Possessions, on either side, near the Boundaries, till the Matters in Dispute should be adjusted here at home. Co. Off. No. 34.

1737. *April* 21.

By Order in Council that Petition was referred to the Lords of the Committee of Council, to consider the same, and report their Opinion thereupon to his Majesty. Co. Off. No. 35.

May 5.

By an Order, made by the Lords of the Committee, upon reading a Report from the Lords of Trade, which was made upon a Petition of the now Plaintiffs, praying the King's Approbation of Colonel Thomas to be Deputy Governor of Pensilvania and the three lower Counties, and, upon considering Lord Baltimore's Petition referred to the Committee the 21st of April last, the Lords ordered that the said Report should be referred back to the Board of Trade, together with Lord Baltimore's said Petition, who were to examine into the whole Matter, and report their Opinion thereupon to the Committee, And whereas there was also laid before the Committee a Reference of the 17th of March last, of another Petition from the President, Council and Assembly of Pensilvania, complaining of several Acts of Violence done, by Persons acting under Lord Baltimore, against the People of Pensilvania, together with my Lord Baltimore's Answer thereto, and several Papers accompanying the same, their Lordships likewise ordered that all those Papers should be transmitted to the Lords of Trade, that they might examine into the same, at the same time as they should consider of the other Matters above referred to them, if they thought fit; in which case they were likewise to report their Opinion thereupon, to the Committee, otherwise, to re-transmit the said Papers. Co. Off. No. 36.

June 3.

A Report from the Lords of Trade that they had read all the Papers referred to them, and had heard my Lord Baltimore and Mr. Penns. by their Council, what they had to offer, with regard to the Appointment of Colonel Thomas by the Proprietors of Pensilvania, for the Government of Pensilvania, and the three lower Counties; upon which they report, "That from the Time that the Province of Pensilvania, and the 3 lower Counties were possess'd by the late William Penn, they have been governed either by the Proprietor, or by Deputies appointed by him and his Successors with the Approbation of the Crown: and upon every Appointment of a Deputy Governor the Proprietors have constantly signed an Instrument declaring under their Hands and Seals that his Majesty's Approbation and Allowance of the Deputies so appointed by them for the Government of the 3 lower Counties shall not be construed in any manner to diminish or set aside the Right claimed by the Crown to the said 3 lower Counties*: what this Right claimed by the Crown is, as also the Claim made by

*This is true from 1702 to this time: but 'twas otherwise from 1682 to 1702.

"my Lord Baltimore, appears very distinctly set forth in a Report to his Majesty of 21 October 1717. from Sir Edward Northey and Sir William Thompson, then Attorney and Solicitor General, and of which we take leave to annex a Copy." The Lords of Trade further report, that there having been Disputes, between Lord Baltimore and the Proprietors of Pennsylvania, touching Boundaries, an Agreement was made, between them, 10 May 1732. relative thereto, and not being carried into Execution, the Proprietors of Pennsylvania had filed their Bill in Chancery against Lord Baltimore for a specific Performance thereof: "Which Dispute being yet depending in the said Court, we don't think it proper to advise any Alteration in the usual manner of appointing the Deputy Governor of the said Three Lower Counties." And the Lords of Trade re-transmitted the Petition from the President, Council and Assembly of Pennsylvania, relating to Boundaries, and other Papers on that Subject, but proposed, in order to prevent Disturbances for the future, that the King should enjoin the respective Governors to preserve Peace and good Neighbourhood. Co. Off. No. 37.

June 15.

The Defendant put in his Answer to our Bill, wherein, by the way, he now swears that the Lower Counties are *ay* no means contiguous to Pennsylvania, for that one is of the one Side, and the others on the other Side of Delaware. A wonderful Change since his Petition of the 21st of April last, not two Months before!

July 21.

Lord Baltimore did not at all like the Report of the Board of Trade in Favour of our Nomination, wherefore he petitioned the King in Council against it; and insisted that by Sir Edward Northey's and Sir William Thompson's Report of 1717, it clearly appeared Mr. Penns had no legal Right or Title to the lower Counties; and that on 16 Jan. 1734. the Lords of Trade had made such an [*ex parte*] Report in his Favour: so that the Petitioner may very safely affirm that there has never yet been any one Determination in Favour of the Right claimed by Mr. Penns to the said 3 lower Counties, and he apprehends it is impossible for them to make out any legal Right or Title thereto; whereas it appears by the said [*ex parte*] Report, that the same are included within the Limits of the Maryland Charter; that tho' the said Counties have been, for many Years past, under the Government of the same Person as was appointed Governor of Pennsylvania, yet all those Governors (save the last) were so appointed while his Ancestors were under legal Disabilities, being Roman Catholics, and when the

Government of Maryland was in the Hands of the Crown, or during the Petitioner's Infancy, therefore hopes those instances shall not be used as an Argument now, when those Disabilities are removed; and the rather, because such Appointments have, in the Progress of the Disputes with Mr. Penns, been constantly made use of, and insisted on, as Evidence of their Right, in Opposition to that claimed and insisted on by the Petitioner; and, as such Approbation, at this Juncture, and pending the Dispute now carrying on in Chancery, would, in all Probability, be insisted on by them, as a further Evidence of their Right, not only against the Petitioner, but against the King too, which might be of great Disadvantage to the Petitioner*. That the Petitioner does not desire the Government of the said Counties to be put into the Hands of any of his Nomination: all that he desires being, that they may be under the Government of an indifferent Person, till the Disputes between Mr. Penns and him, in relation thereto, are finally settled and adjusted; and that, whoever the Person is, he may be appointed by Commission directly from his Majesty. Therefore prays the King to reject Mr. Penns Nomination of Colonel Thomas to be Governor of the said lower Counties, and that the King will please to appoint Colonel Thomas, or such other as He shall think fit, to be Governor of the said Counties, by Commission from his Majesty, till the said disputes shall be finally determined between him and Mr. Penns; and that this Petition may come on to be heard at the same time with his former Petition, and the Report of the Lords of Trade made thereon. Co. Off. No. 38.

July 21.

This Petition was by Order in Council referred to the Lords of the Committee of Council to consider the same and report their Opinion thereon. Co. Off. No. 39.

Feb. 4.

A Report from the Committee of Council, That they had appointed a Day to consider the two Petitions of Lord Baltimore, referred the 21st of April and 21st of July, relating to the Appointment of the Deputy Governor, but, in the mean time, and before the Consideration thereof, the Agent for Lord Baltimore attended the Committee, and signified to them that there was a Suit now depending in Chancery between the Petitioner and the Proprietors of Pensylvania, for determining

*After all these Apprehensions, when this Petition was appointed to be heard, Lord Baltimore would not stand a Hearing; but prayed, and had Leave, to withdraw this Petition, that is, in effect, not to proceed on it, for the Petition still remains in the Office.

the Right to the said 3 lower Counties, and that the Petitioner, upon further Consideration, was willing to wait, till the same should be determined, and did not intend to make any Opposition to the Nomination of Colonel Thomas, and therefore prayed to be permitted to withdraw his said Petitions. The Lords of the Committee thereupon report that his Majesty may be pleased to permit and allow the Petitioner to withdraw his said two Petitions accordingly. Co. Off. No. 40.

Feb. 6.

By Order in Council made upon reading that Report, his Majesty in Council approved that Report, and ordered that the Lord Baltimore be allowed to withdraw his said two Petitions accordingly. Co. Off. No. 40.

Feb. 7.

Being the very next Day, the Lords of the Committee made a further Report, upon Mr. Penns Nomination of Colonel Thomas, that his Majesty might be pleased to approve of Colonel Thomas to be Deputy Governor of Pensilvania, and the 3 lower Counties of Newcastle, Kent and Sussex in the Manner, and upon the Conditions proposed by the Lords of Trade, [which were in the same Words as the other former instances] and Colonel Thomas, being then in the Leeward Islands, they proposed he might qualify himself, and give the Security, before the Governor or Commander in chief in one of the Leeward Island. Co. Off. No. 41.

Feb. 15.

By Order in Council his Majesty approved that Report, and order'd according to what was thereby proposed. Co. Off. No. 42.

Note, An Entry of this last Order in the Newcastle Records, No. 11. Fol. 106.

1738. *May 4.*

The Lords of the Committee of Council made a Report to the King in Council, upon the Petition of the President, Council and Assembly of Pensilvania, and likewise some cross Petitions from Maryland, which had been referred to their Lordships on 17 March 1736, and 21 July 1737, complaining, on both Sides, of Disorders and Outrages, committed on the Borders of Maryland and Pensilvania; and stating that they had made a former Report on the 29 of July 1737, and that his Majesty had thereupon made a (temporary) Order on 18 Aug. 1737: That, since that Time, several fresh Petitions had come in, from Maryland and from Pensilvania, complaining of fresh Disorders, and that Mr. Penns had petitioned for the King's further Pleasure to be

declared relating to the said Order of 18 Aug. 1737; That the Lords of the Committee had on the 23d Feb. last proceeded to take all the Papers relating to the said Complaints made by each of the Provinces into Consideration, and were attended by Council on both Sides, and likewise by the Proprietors of both Provinces, and the Counsel desiring that Time might be allowed the Proprietors, to confer together, in order to come to some agreement amongst themselves, that so the Peace of both Provinces might be preserved, till such time as the Boundaries could be finally settled, the Lords of the Committee had complied with their Request, and being, this Day, attended by all Parties, the Counsel acquainted the Committee that the Proprietors, of each Province, had accordingly met and agreed to the there following Propositions; to which Propositions the Proprietors of each Province had signified their Consent, before the Committee, and declared their Readiness to carry the same into Execution, if his Majesty should be pleased to approve thereof: and the Committee, considering that this Agreement might be a proper Expedient for restoring Peace and Tranquillity between the said Provinces, and for preventing any the like Disturbances for the future, did therefore agree to lay the same before his Majesty for his Royal Approbation. Co. Off. No. 43.

Note. So much of that Agreement as any way relates to the present Point was, fixing between the (meer) Province of Pennsylvania and Maryland a Line for Temporary Jurisdiction, to be exercised in those respective Provinces. And as the Articles of 10 May 1732, had made the North Bounds of Maryland, and the South Bounds of Pennsylvania, to be just 15 Miles South of Philadelphia, so, to come as near to it as might be, (but not to confirm it) it was agreed that the provisional and temporary Limits, till the Boundaries should be finally settled, should be, on the East Side of Susquehannah River, 15 Miles and one Quarter South of Philadelphia, and on the West Side of Susquehannah River, 14 Miles and 3 Quarters South of Philadelphia; but this, to be without Prejudice to either Party; and it was also agreed that the respective Proprietors should receive the Quit-Rents due on their own Sides of that temporary Line: and the Order of Council of 18 Aug. 1737, (which had laid Restrictions upon Mr. Penns as to their granting out of Lands in the lower Counties) was agreed to be discharged.

May 25.

By his Majesty's Order in Council made upon reading the said Report, in order to preserve Peace and Tranquillity between the said Provinces, and to prevent any the like Disturbances

for the future, his Majesty in Council approved of the said Agreement, entered into between the Proprietors of the said respective Provinces, and ordered that the Proprietors of the said respective Provinces of Maryland and Pensilvania, should cause the said Agreement to be carried into Execution; whereof the said Proprietors, and all others whom it might concern, were to take notice, and govern themselves accordingly. Co. Off. No. 43.

1740. *Jan.* 29.

By Bargain and Sale enrolled Thomas Jackson re-conveys the Premises which had been mortgaged originally to William Penn for 5000*l.* unto John and Thomas Penn and their Heirs. As to one Moiety to the Use of John Penn and his Heirs in Fee, as to one Quarter Part to the Use of Thomas Penn and his Heirs in Fee, and as to the other Quarter Part to the Use of John and Thomas Penn in Fee, but in Trust for Richard Penn, his Heirs and Assigns for ever. Parchment Deed proved by Paris.

1740.

A written Map made of Part of Pensilvania, and of the three Lower Counties, &c. extremely material for the understanding of this Case, which Map divers Witnesses, Surveyors in other Provinces as well as in Pensilvania, have been examined and have spoken to, viz. Jacob Hewling, Thomas Miles, Thomas Noxon and Benjamin Eastburn. Map in a large marbled Paper Cover—Of which there is a printed Copy at the Beginning of this Brief (say Book.)

1742. *May* 28.

A Release from Letitia Aubrey (the Daughter of Proprietary William Penn) to the said John, Thomas and Richard Penn of the 10,000 Acres left her by her Father, and of all Claims by Virtue of his Will. This was executed in order to make her an unexceptionable Witness, she being examined 3 or 4 Days after. Parchment Deed proved by Paris.

CHAP. XVII. *Containing No Proof, but a Case stated to, an ! the Opinions of, Sir Clement Wearg, Mr. (now Lord Chief Justice) Willes, and Sir Philip Yorke, (now Lord Chancellor) thereon, relating to the Construction of Lord Baltimore's Charter, and his Bounds.*

MARYLAND, in the Grant from King Charles the 1st to the Lord Baltimore, dated the 20th of June 1632, is thus described, viz. "That Part of a Peninsula, lying in the Parts of America, "between the Ocean on the East, and the Bay of Chesapeake on "the West, and divided from the other Part thereof by a Right

"Line, drawn from the Promontory or Cape of Land called
 "Watkins's Point (scituate in the aforesaid Bay near the River
 "Wight) on the West, unto the main Ocean on the East, and,
 "between that Bound on the South, unto that Part of Dela-
 "ware Bay on the North, which lyeth under the 40th Degree of
 "Northern Latitude from the Equinoctial, where New England
 "ends. And all that Tract of Land, between the Bounds afore-
 "said, that is to say, passing from the aforesaid Bay called
 "Delaware Bay, in a Right Line, by the Degree aforesaid, unto
 "the true Meridian of the first Fountain of the River Potow-
 "meck, and, from thence, trending towards the South, unto
 "the farther Bank of the aforesaid River, and following the
 "West and South side thereof, unto a certain Place called
 "Cinquake, situated near the Mouth of the said River, where
 "it falls into the Bay of Chesapeake, and from thence, by a
 "straight Line, unto the aforesaid Promontory or Place called
 "Watkins Point."

Pensilvania, in the Grant from King Charles the Second to
 William Penn Esq; dated the 4th of March 1680, is thus de-
 scribed, viz. "All that Tract or Part of Land in America,
 "with all the Islands therein contained, as the same is bounded
 "on the East by Delaware River, from twelve Miles Distance
 "Northward of Newcastle Town, unto the 43th Degree of North-
 "ern Latitude, if the said River doth extend so far Northward,
 "but if the said River doth not extend so far Northwards, then,
 "by the said River so far as it both extend, and from the Head
 "of the said River, the Eastern Bounds are to be determined by
 "a Meridian Line, to be drawn from the said River unto the
 "43th Degree; The said Lands to extend Westward five Degrees
 "of Longitude, to be computed from the said Eastern Bounds,
 "and the said Lands to be bounded to the North by the Be-
 "ginning of the three and fortieth Degree of Northern Latitude,
 "and on the South by a Circle drawn at 12 Miles Distance from
 "Newcastle, Northwards and Westwards, unto the Beginning
 "of the 40th Degree of Northern Latitude, then, by a straight
 "Line, Westward, to the Limits of Longitude above-mentioned."

The Grant of Maryland begins with that Part of a Peninsula
 lying between the Ocean on the East (by which most of it is
 bounded) and Chesapeake Bay on the West: The Extent of
 the Province Northward is to that Part of Delaware Bay, which
 lyeth under the 40th Degree of Northern Latitude, and the
 Northern Boundary of it is a Right Line passing from Dela-
 ware Bay by the Degree aforesaid. In this Description, Dela-
 ware Bay is twice mentioned as the Limits of Maryland; but
 neither Delaware River, which falls into the Bay of that Name,
 nor Sasquahannah, the great River which falls into the Head

of Chesapeake Bay, are mentioned on any account; but the Peninsula is confined to the Ocean and Bay of Delaware on the East, and Chesapeake Bay on the West, which two Bays, bending in, at their Heads, towards each other, truly from a narrow Isthmus or Neck of Land terminating the Peninsula there.

The Geographical Maps of those Parts, extant at the Time of the Grant for Maryland, from whence there are very strong Arguments to prove the Description of that Province was taken, placed 40 Degrees very near to the Head of Chesapeake Bay and the aforesaid Isthmus there.

From all which it appears where the Northern Boundary of Maryland was, by the Grant, understood to be placed, viz: at that Isthmus or Northern Part of the Peninsula, near the Heads of the Chesapeake and Delaware Bays, and not far from the Town built on Delaware by the Dutch, since called Newcastle.

Pensilvania, by the Grant for it, is bounded on the South by a Circle drawn at 12 Miles distant from Newcastle, Northward and Westward, that is, by the Northward and Westward Parts of that Circle, unto the Beginning of the 40th Degree of Northern Latitude, then by a straight Line, &c. which seems perfectly to agree with the above-mentioned Bounds of Maryland.

In the Years 1681 and 82, great Numbers of sober and industrious People, with their Families and Estates, by Favour of that Grant, went over to Pensilvania, and there laid out their Substance in settling themselves, and making large Improvements, beginning at the Southern Bounds of the Province on Delaware River, as those Bounds are above described.

And about the Year 1683, the Lord Baltimore, then in Maryland, caused a Line to be run and marked out, 6 or 8 Miles more Northerly than the above-mentioned Bounds, as his Northern Boundary at that time; Upon which he demanded of the Proprietor of Pensilvania, all the Lands to the Southward of it, as by the Copy of his Commission annexed, appears: and Pensilvania, to avoid Contention, has never, hitherto, made any Grant or Settlement to the Southward of that Line.

But in the Year 1714, by a large Astronomical Instrument sent over on purpose, and by another since that time, the Lord Baltimore caused Observations of the Latitude to be made, by which they extend the Claim of Maryland not only beyond the Peninsula and Isthmus, the Bays of Delaware and Chesapeake, and the Line run by the present Lord Baltimore's Ancestor, but, passing the Isthmus, they carry it up the Rivers Delaware and Sasquahannah (which exceedingly diverge in their Courses) so far as to take in the most valuable Improvements of all Pen-

silvania, alledging that the true Position of the 40th Degree will fall somewhat above the Town of Philadelphia, and that they are not to be confined to the Description of the Peninsula and Bay of Delaware, tho' these are visible Places on the Earth, which may always be certainly known, while Astronomical Observations are always subject to be controverted; but that their Grant will extend as far as the said Latitude of 40, where ever that shall be found to fall, by Observations skilfully taken.

Now, allowing that what is most commonly understood by the 40th Degree, should, by more accurate Observations at this time, be found to reach more Northërly than was supposed by the respective Grants.

Quære. Whether the Lord Baltimore has, or can claim, a Right to any Lands lying to the Northward of the Peninsula, and of the Bays of Delaware and Chesapeake, and beyond the Bounds, as understood at the time of his Grant, within the Grant of Pensilvania, now settled above 40 Years?

This Question depends upon the Intent of the King, with regard to the Boundaries of Maryland, and it seems to me, by the Boundaries described in the Charter, that the King intended Maryland should not extend North beyond Delaware Bay, which was then thought to reach to the 40th Degree of Northern Latitude, and so described by the Charts of those Times; and tho', upon a more exact Observation, it shall be discovered that the Bay don't reach so far North, yet, I apprehend, the North Part of the Bay was intended to be the North Boundary of Maryland: This is confirmed by the subsequent Grant of Pensilvania, and by the Line drawn by the Ancestors of the Lord Baltimore. C. Wearg, 11 April, 1724.

I am of opinion, that Lord Baltimore has no Right to any Lands lying Northwards of the Isthmus of the Peninsula, beyond the Bays of Delaware and Chesapeake: The Limits of Maryland are, by the Grant of King Charles the First, plainly fixed there; And by the subsequent Grant to Mr. Penn by King Charles the Second, 'Tis likewise manifest, that Pensilvania was to extend as far Southward as the Beginning of the said Isthmus and Bays, except only that little Compass of Ground round about Newcastle. The Alteration of the Latitude, which gave occasion for this Dispute, seems to me to be of no consequence at all, since the Latitude was mentioned in Lord Baltimore's Grant for no other purpose but to describe that Tract of Land which was then esteemed to lie under the 40th Degree of Latitude. To ascertain the Bounds, therefore, it must be considered where the 40th Degree of Latitude was fixed at the time of the said Grant, and tho' that appears to be mistaken

by some latter Calculation, the Case will not be altered thereby, since that Tract of Land which, at the time of the said Grant, was esteemed to be in that Degree of Latitude and not any Point in the Heavens, was to be the Mark of the Boundary betwixt Pensilvania and Maryland; besides, as neither of the Rivers of Delaware or Sasquehannah are mentioned in Lord Baltimore's Grant, and as it expressly appears by that Grant, that Maryland was not to extend Northwards beyond the Isthmus of the Peninsula, for those Reasons, likewise, 'tis plain to a Demonstration that there is no colour for extending the Bounds of Maryland Northwards, as Lord Baltimore endeavours to do. J. Willes, 28 Feb. 1733.

I am of opinion, that the Boundaries described in the Lord Baltimore's Grant, must now be understood in the same manner as they were at the time of the making thereof, and consequently, that in case the Extent of Maryland to the North should be taken to be to the 40th Degree of Northern Latitude, yet, that 40th Degree must be taken to be according to the Calculation allowed at that time, and as it was then laid down in Maps and Charts, even tho' that Calculation was really erroneous. And what the rather convinces me that Lord Baltimore can claim nothing to the Northward of the Peninsula is, that the Description is not, to the 40th Degree of the Northern Latitude, but to that Part of Delaware Bay which lies under the 40th Degree of Northern Latitude. Now, if Delaware Bay be rightly laid down in the Plans laid before me, no Part of it comes near to that Line, where, by their late Observations they would fix the 40th Degree of Northern Latitude, and therefore that could not be the Northern Boundary intended by the Grant. P. Yorke. 23 May, 1724.

We shall find some trifling Surveyors Dependents on the Lord Baltimore taking upon them to expound the King's Charter, very badly as Lawyers, and if possible worse as Mathematicians, by and by. Against whose Opinions the foregoing will abundantly serve.

And now we come to the Depositions of Witnesses on both sides.

DEPOSITIONS FOR THE PLAINTIFFS, WITH SOME OBSERVATIONS THEREON.

NOTE. The Proofs being abundantly long, the common Proof of the Execution of Deeds, or of Copys of Papers from the Chapel of the Rolls, Council Office, or Board of Trade, &c. which are not attended with some special Circumstances, are

omitted here; having a Scheme in my Hand, ready to turn at the Hearing, instantly to the Proof of any such Papers as those, if demanded.

NOTE, As often as we quote the Depositions of

*John Anderson,

*John Garetson,

*James Steel, who was one of our Commissioners to execute the Articles, and our Receiver General of Quit-Rents.

*Wooman Stockley,

*William Till,

William Waples, there is this Mark set before their Names, which is, to denote that the Defendant has cross examined them as to their being interested only, which they have so far acknowledged, as to say they hold Lands in the three Lower Counties, under the Plaintiffs; altho' some of them say, they don't believe themselves concerned in the Event of the Cause, notwithstanding that; their cross Examinations are at the very Beginning of the Brief of the Defendant's Depositions, where you'll see how far their Concern leaves them good Witnesses, or not. If you think them all exceptionable, we have other Witnesses, to the Point they speak to; and, rather than fail, the Defendant, himself, has proved every Fact for us. The Person we would least choose to lose is James Steel, who is one of our Witnesses that prove our receiving of Quit-Rents, tho' that also the Defendant has likewise proved for us.

1ST BRANCH, relating to the first Discovery of the Peninsula, and the first Maps publish'd before the Year 1632, and how many several Editions of Captain Smith's Book had been publish'd before that Year.

Benjamin Eastburn, (Surveyor General of Pensilvania, aged 44. [Lib. C. fo. 678. Int. 2. fo. 769.]

Is acquainted with some Parts of the Peninsula, which shoots out, Southerly from the Main Land or Continent of America into the Ocean, and which lies between West New Jersey and Chesopeak Bay. Became acquainted with the Eastern Parts thereof, lying on Delaware Bay and River, and Part of the Ocean, from Certificates and Drafts of Surveys of Lands made therein under the Pensilvania Proprietors; which Certificates and Drafts were returned into the Surveyor General's Office in Pensilvania, which Office he has enjoyed for seven Years past: Became acquainted with the Northern Parts of the said Peninsula by travelling and making Personal Observations there. Has acquired his Knowledge

of the other Parts of said Peninsula, by reading and studying Books and Maps of Geography, and Accounts of Voyages and Discover of Lands and Territories in America. Such Maps, Books and Accounts have been his Study for about twenty Years. That in 1624, Captain John Smith published a Book, containing an Account of said Peninsula, and several adjacent parts, with a Map describing the same. Which Book and Map he believes, was the first particular Account and Description of those Parts, published by any Englishman. Has look'd on that printed Book, exhibited to him, the same is the Book by him before mentioned, and which he believes, is well known amongst Historians, Geographers and Mathematicians. Likewise believes that the Map between Fol. 40. and 41. of that Book, in which Map there are these Words, (Discovered and described by Captain John Smith 1606.) is well known to Historians, Geographers and Mathematicians. And the said Book and Map are generally reputed and esteemed to be published by said Smith in or about 1624. Says he neither knows nor has heard, that any other Book or Map, describing the Parts aforesaid, were printed or published, by any Englishman, before the Month of June 1632.

James Logan, aged 66. [Lib. B. fol. 76. Int. 2. fol. 78.]

Is well acquainted with the Peninsula, lying between West New Jersey and Chesopeak Bay; became acquainted with it, by ocular Views, by Maps, and by reading Books of Geography and History. Has consulted and considered Maps, Books of Geography and History, and Accounts of Voyages, at times for 30 Years past. From his Reading and Observation believes Captain John Smith, the Author of Smith's History of Virginia, printed in London 1624, was the first Englishman that printed any Map and Account of the said Peninsula, and the Territories adjacent thereto. That he has look'd on the said Book, now produced, and believes it is well known amongst Historians, Geographers and Mathematicians, and was the Foundation of Beverly's History of Virginia. Has viewed the Map of Virginia, between Fol. 40. and 41. of the said Book, in which Map it's said that Virginia was discovered and described by the said Captain Smith in 1606. And believes the said Map is likewise well known amongst Historians, Geographers and Mathematicians; and which Book and Map he believes, are generally esteemed to be publish'd by Captain Smith, about the Time in the Title-Page mentioned; and are, as he believes, of unquestionable Credit amongst all learned Men; has neither known, seen, or been acquainted with, any other printed History, Map, or Description of the said Peninsula, done, or reputed to be done, by any

Englishman or Foreigner, that were extant so early as June 1632. And believes there is not any other, because, on diligent Search of Mercator's, Jansen's, and Bleau's Atlas, he could never discover any.

Ferd. John Paris, [Lib. A. fol. 195. Int. 26. fol. 312.]

Has diligently enquired after the most ancient printed Map of Virginia, or the Places in Question, that had been made, or was reputed to have been made, by any Englishman; and the Account he obtained was, that Captain Smith's Account of Virginia, and his Map thereof, were the first and best Accounts of the Discovery, and his Map the earliest printed Map, of those Parts, that were ever printed by any Englishman; whereupon, made very diligent Search, to find out as many ancient Editions thereof, as he could; and found the said Map, in some printed Accounts, said to be of Captain Smith's and bearing Date severally in the Years 1612, 1624, and 1625. Saith, the Quarto bound Book produced and lettered (West-Indies B.) he found in a Collection of Books, which he is informed and believes, was heretofore given by Dr. White Kennet, Bishop of Peterborough deceased, to the Society for the Propagation of the Gospel in foreign Parts, for an American Library for the said Society; and out of which Collection or Library he borrowed that Quarto Book, which contains sundry printed Tracts, relating to several Parts of the Continent of America, bound up together; the first whereof is entitled, A Map of Virginia, with a Description of the Country, &c. written by Captain Smith, some time Governor of the Country, and mentions to have been printed at Oxford by Joseph Barnes 1612; at the End of which Tract, in the said Quarto bound Book, there is a printed Map of Virginia, which is therein said to be discovered and described by Captain John Smith: saith that in his Searches, he, at several Booksellers, met with a thin Folio Edition of a Work, which appeared to this Deponent to be an ancient Book, and which was entitled, The General History of Virginia, New England, &c. also the Maps and Descriptions of all those Countries, &c. divided into 6 Books, by Captain John Smith, sometimes Governour in those Countries, &c. and Admiral of New England. London printed for Michael Sparkes 1624; before the Page (41) of which thin Folio, there is the like printed Map of Virginia (to this Deponent's belief) with that in the said before mentioned Quarto Book of 1612; and easily finding many printed Copies of the said thin folio Book and Map, did, therefore buy two (if not three) of the same, one of which is now produced, having the Letters J. S. stamp'd into the Cover. And also found out

another very large Collection of Discoveries and Voyages, contained in a Work said to be printed in 1625; which consists of several thick Volumes in Folio, and is commonly called Purchas Pilgrims; in one Volume of which last mentioned Work now produced and lettered (Purchas Pilgrims Vol. IV. between Pages 1690 and 1691, another like printed Copy of the said Captain Smith's Map, appears to this Deponent to be fixed; and which Map in Purchas's, and in Captain Smith's thin Folio History, this Deponent believes are both printed off from one Plate which believes not only from the great Similitude of the two Copys, but also from an Observation upon both the said Maps which he particularly mentions, besides which three Editions of 1612, 1624, and 1625. the Deponent upon his best Observation, believes that the Book in Ogylby's of 1671, (before mentioned by and produced to the Deponent) does about Fol. 192, contain a Map of New Virginia, likewise drawn from, and nearly correspondent to, the said Smith's Maps, in the Out-Lines of the Country, and Places therein contained.

2D BRANCH to prove my Lord Baltimore's now printed Book and Map, and Description of Maryland, and how far he then claimed; published in the Year 1635, within three Years after the Date of his Charter, and soon after he had landed in, taken Possession of, and settled his Province of Maryland.

Dr. Thomas Stack. [Lib. A. Fol. 41. Int. 45. Fol. 42.]

That he has looked upon the Book or Collection of Tracts, bound up all together, now produced, which is a Volume of about 19 various Tracts, on different Subjects, several of which regard our Foreign Plantations; and it is mark'd, at the Top of the first Leaf within the Cover C. 199, which is a Mark of Sir Hans Sloane's Library, to which the said produced Volume answers in his Catalogue; the same Page also contains these Words (Hans Sloane) written by himself, as he acknowledged to this Deponent: and this Deponent is well assured. Saith that Sir Hans Sloane is the present Owner or Proprietor of the said Volume, and which he can depose, because that on Tuesday last, he intrusted the Deponent with the said Volume, out of his Library, in order to be examin'd to in this Cause, on the Deponent's giving him a Receipt for the return thereof to him again, and also, because, that, some Years ago, he intrusted this Deponent therewith, in order to be produced at the Board of Trade. And further for that, in examining Sir Hans Sloane's Library, in the Year 1733, soon after he appointed the Deponent

his Librarian the Deponent then took Notice of the said produced Volume. And verily believes Sir Hans Sloane has been in Possession of the said Volume between 40 and 50 Years, for that very particular Tract contained therein is entered in the first Volume of his Catalogue, in his own Hand Writing, which first Volume of his Catalogue, as far as is written by himself, does not to the best of the Deponent's Remembrance, contain any one Book or Tract publish'd since the Year 1699; and therefore believed that he was in Possession of all the Books, entered by himself in the said first Volume in or before the said Year 1699; and saith that Sir Hans Sloane has been collecting ancient and curious Books and Tracts ever since 1682, at least, as he has often told the Deponent and the Deponent is well assured to be true: for the Deponent has often taken Notice of several Books in his Library, in which he mark'd the Date of buying and purchasing them to be 1682, written with his own Hand, in the said respective Books; and saith that Sir Hans Sloane has a very large Library, and in particular, a vast Collection of small Tracts, commonly called Pamphlets; and the Deponent observed whilst he took Care of Sir Hans Sloane's Library, that he had been from the said Year 1682, and then was extremely curious in collecting every thing, especially Old Tracts published, or even in Manuscript, relating to our Plantations and Settlements abroad, Voyages and Travels, and many other things; on which said particular Subject does not remember that Sir Hans ever omitted to purchase, or endeavoured to purchase, any Book or Tract, especially Old ones, that a most diligent enquiry and examination, or perusal of Catalogues of Books to be sold could intimate to him: saith the precise Time when the said Sir Hans Sloane became first possessed of the said produced Volume does not appear by any List, Catalogue or Account kept in his Library, but firmly believes Sir Hans has been in Possession thereof between 40 and 50 Years for the Reasons above mentioned. Saith that he hath look'd upon that particular Tract, bound up in the said produced Volume, which purports to contain (a Relation of Maryland, together with a Map of the Country, the Conditions of Plantation, his Majesty's Charter to Lord Baltimore translated into English) and bearing for its Date September the 8th, Anno Dom. 1635. And takes himself to be pretty well acquainted with Books, having had Academical Education, and always loved Books, and having taken Care of Sir Hans Sloane's Library about 7 Years; which Library contains near 40,000 Volumes, among which are an immense Number of small Tracts, collected and bound together in Volumes, for their Preservation; and he

also, having at present, and for some time past, the Care of Dr. Mead's Library. and having about 2500 Volumes in his own Study or Library. And saith it is no difficult matter for a Person conversant with Books, to distinguish an Old Book, or a Book printed above a 100 Years since, from a New Book; the Letter or Type, the Paper, often the Paper-Mark, and in short the whole Face or Appearance of the Book or Tract, are very good Grounds to make such a Distinction. And saith that he saw and considered the particular Tract of the said produced Book herein above-mentioned, upon the Occasion here after mentioned, (to wit) about 7 or 8 Years ago, a Gentleman unknown to this Deponent, who called himself Mr. Penn, came to Sir Hans Sloane, and desired a Sight of the said particular Tract: whereupon the Deponent, by the said Sir Hans Sloane's Direction (to whom the Deponent was then Librarian) look'd for the Entry of the said Tract in his Catalogue, (the usual way of finding Books in great Libraries) and having found it, the Deponent brought the said produced Volume which contains it, to the said Sir Hans, who in this Deponent's Presence shewed the said particular Tract, and the Map contained therein, to Mr. Penn: and the said Mr. Penn desired the Loan of it, for a Day on any Security, which Sir Hans did not agree to: but the said Mr. Penn urging that it would be a great Detriment to him, in a Cause depending between him and the Lord Baltimore, if the said produced Book could not be produced that same Day at the Board of Trade, the said Sir Hans said, he would intrust the Deponent with it, for that purpose, on Condition that the Deponent would not part with it out of his Sight or Possession, but barely produce it at the said Board of Trade, if required; and therefore he desired the Deponent to take the said produced Book, and carry it directly to the said Board of Trade and bring it back again; which the Deponent accordingly did; and after the Deponent's return home to the said Sir Hans, this Deponent carefully examined and considered the said Tract in particular, and really believes that the said Tract is a genuine one, printed and published at the Time of its Date, (to wit) September the 8th 1635, and not a new or modern Tract; and that the Motive of the said Sir Hans Sloane, in procuring the said particular Tract was, his extreme Curiosity in purchasing every thing published or even in Manuscript, relating to our Plantations abroad; and really believes Sir Hans had no private View in procuring the said Tract, nor any View therein than that of making his Collection of Books and Tracts on the Subjects before-mentioned as compleate as he possibly could, and consequently, no View of deceiving or imposing on any Person whatsoever. And

saith that the said Tract has an Engraved and Printed Map inserted, between Pages 12 and 13, and bound up with it, which Map it had at the Time this Deponent examined it, as above-mentioned. And saith the said Map hath these Words (Hans Sloane) written on the Back of it, which the said Sir Hans told the Deponent he formerly wrote on it, to the best of his Remembrance upon occasion of lending the said produced Volume out of his Library. And saith that upon a strict Examination, and impartial Observation, on the said Map, he does verily believe it to be a genuine and ancient Map, cotemporary with the said Tract, to be intended for the said Tract, and to be the very identical Map expressed in the Title-Page of the said Tract. And saith he hath looked upon a small printed Tract, now likewise produced, which is not complete or perfect at the latter end thereof; and which is marked on the Outside (Maryland 1635.) and he hath also looked upon the written Map of Maryland, contained between the 12th and 13th Pages thereof; and saith that he hath very carefully and diligently examined and compared the said last mentioned single Tract (so far as it goes) with the above-mentioned particular Tract in the aforesaid produced Volume of Tracts, and finds they very exactly and minutely agree together, except that the Title-Page in the said single Tract having been partly wore or tore off, and the Defect thereof supplied by Writing, this Deponent observes that the Word (London) which is printed underneath the Word (Dolphin) in the said produced Volume, is omitted to be copied in the said single Tract; and really believes that the said two Tracts are equally genuine, so far as they are perfect; and that they are two Copies of the same original Impression, of the same Tract; for this Deponent finds an exact Agreement or Sameness, in the Frame of the Letter-Press, the Letter or Type, the Lines of each Page, the Orthography, the Punctuation, the Errors, some bad Types, and the Mark or Alphabet of the Sheets at the Bottom of the Pages. And saith he hath compared and examined the written Map, contained in the said single Tract, with the printed Map contained in the said produced Collection of Tracts, and believes the said written Map to be a good Copy of the said printed one. And this Deponent has observed that there is, in both the said Maps, a Place called Chesopeak Bay, and each of the said Maps contain a prick'd or dotted strait Line, running quite thro' the said Maps, from East to West, at the Figure (40) which Figure (40) is at the East-side or Border of the said Maps; and the said prickt or dotted streight Line, in both the said printed and written Maps, runs in the same place, or extremely near, in each of the said respective Maps; and the said prickt or dotted streight Line runs

close in one part thereof, to the Head of Chesapeake Bay, in both the said printed and written Maps.

NOTE—The Use of establishing this Book and Map printed by Lord Baltimore himself, so early as in 1635, to invite Persons to settle his Country, in three Years after it was granted to him, is to shew that then he laid down the 40th Degree compleat to touch or make a Tangent to the Head of Chesapeake Bay; whereas he has since from time to time encroacht, and we have now granted to him, beyond every of his Encroachments.

Ferd. John Paris [Lib. A. fol. 195. Int. 27. fol. 322.]

That he hath diligently enquired after the most ancient printed Maps and Accounts of the particular Province of Maryland, but hath not been able to discover more than two such ancient printed Maps and Accounts which particularly and professedly treat of Maryland, as a particular Province: The one of which was, and is a small Quarto Book called or said to be a Relation of Maryland, together with a Map of the Country, the Conditions of Plantation, his Majesty's Charter to the Lord Baltimore translated into English, &c. and bearing for the Date of such Book the 8th of September, Anno Domini 1635, in which was a Map of Maryland and the other was the said Book of Ogilby's of 1671 before spoken of by, and produced to this Deponent; In which last mentioned Book, at about Folio 183, there appeared to this Deponent to be a new Description of Maryland, together with a Map of that Province very nearly agreeing in the Out Lines (according to the Deponent's best Judgment and Belief) with that in the said small Book of 1635; but containing more and other Names, and different Names, of Places from those contained in the said other Book and Map of 1635; But, besides such printed Maps and Accounts, the Deponent found out, at the Board of Trade, a written Map of Maryland, which the Deponent believes and apprehends, to have been a Map of some Antiquity, and before any Grant was made from the Crown of the Province of Pensilvania because, that the Deponent does not, to his apprehension, perceive any Notice taken therein of any such Province as Pensilvania.

3D BRANCH, containing the strongest Proof uncontradicted, that the Nature of the Case can admit of, that there never was any real Order of Council of 4th April 1638, about William Clayborn and the Isle of Kent; but that such Order was made or invented, by Lord Baltimore in the Year 1685.

Ferd. John Paris [Lib. A. fol. 195. Int. 23. fol. 292.]

That he hath perused the Paper produced, markt Botra No 4, and the same bears Date the 4th Day of April 1638, and, according to the Terms and Expressions therein, the same appears to be of the Purport of a Report or Order, of the Privy Council, or of some Lords or Committee thereof, upon some Petition of one William Clayborne relating to the Isle of Kent; and the Deponent got the said produced Copy from the Office of the Lords Commissioners for Trade, and the Reason and Occasion of looking after, and getting out, such produced Copy were, that the Deponent found that Mention was made of some such Paper, in a Petition presented to his Majesty, in the Name of the Defendant on 8th of August 1734, and also in a Report made by the Lords for Trade upon such Petition, on 16th January 1734: wherefore the Deponent was desirous to see what such Paper was? And saith that the Original Paper at the Board of Trade, (from which such now produced Paper was copied) and with which the Deponent examined the same, appeared to be bound up in a Book, not by way of regular Entry of any Papers of the Year 1638, or about that time, but along with a miscellaneous Collection of many other Papers of many different Kinds, Sizes and Dates relating to many different Matters; and such Original Paper did not appear to this Deponent to have then, or to have ever had any Sign, Seal or Mark of Attestation, whatsoever to the same, nor to carry with it any Degree of Authority or Authenticity, to the Deponent's Belief; and as the Deponent conceived that great stress was laid (in the said Petition in 1734) upon such Paper, and as the Deponent discovered some Entries (in or about 1685) that seemed (to this Deponent's Belief) very much to question the Authority of such Paper, the Deponent therefore made Enquiry at the Privy Council Office, whether the Privy Council Registers or Journals of the Year 1638 were in Being or not? Upon which Enquiry being informed that the Council Registers of that Year were in Being, the Deponent did search, and look into the same, and did there find many Acts, Proceedings or Orders of the Privy Council in the said Year 1638, and several of Dates very near the Day, (if not upon the very Day) that the produced Copy bears Date, but after diligent Search made by him could find no Entry there, of any Order, of any such Date as the said

produced Copy, or of any other Date, which related to the said William Clayborn and the said Isle of Kent, of any like Purport with the said Copy now produced.

Samuel Gellibrand [Lib. A. fol. 91. Int. 5. fol. 102.]

Has lookt upon the Exhibit Botra No 4. which purports to be a Copy of Report of the Commissioners for Foreign Plantations upon Clayborne's Petition against Lord Baltimore dated 4th April 1638. Says he never, at any time, saw an Original of the said Paper under any Seal; nor any Copy of it which purported to be signed or attested as an authentick Copy, by any Clerk of the Council. Nor is the Paper, from which the produced Copy was copied, entred up in any Original Journal or Register Book of the Acts and Orders of the Committee of Council for Trade and Plantations, of the Year 1638. or about that time, as he most assuredly believes; For he has made diligent Search, in the said Journals and Registers, of and about that Year, and can find no Entry thereof. Says the Paper, from which the produced Copy was made, remains bound up in one of the old Books in the Plantation Office, with many other Papers, such as Petitions, Orders, Letters, and the like, some whereof are Originals, and others only Copies, which were, as he assuredly believes, at various times, during the Space of several Years, before the Affairs of Trade and Plantations were put into Commission as aforesaid, presented to, laid before, or left with the said Committee for Trade, or their Secretary or other Officers. Says the said Book is not a Book of regular Entries, in any regular Series, but contains miscellaneously, many different Papers relating to many different Matters and Persons, and of many different Dates; and the Papers bound up therein are not all of a size, but some are small Papers, others large, some of them contain Part of a Sheet only, others several Sheets. The 3 Papers contained therein, next preceeding that from whence this Copy was made are dated 18th August 1685, 13th October 1683, and 3 July 1663; and the three Papers, next following it, are dated 4th April 1638, 12th May 1684, and 20th April 1685. Says it has been the Custom and Usage in the said Office, to bind up, in Books, such Papers, and Copies of Papers, as Persons have presented to, or laid before, or left with the Committee, or Lords Commissioners for Trade, or their Secretary; And, in case any Person having Business depending before the said Lords Commissioners should at this time, present to them any Paper as a Copy of an Order of Council of some old Date, and should leave it before them, such Copy would, according to the Course and Usage of the said Office, be bound up into a Book, when there should be Papers enough to make a Volume of, digested

under their respective and distinct Heads and Titles in Order of Time as received and delivered, which was not as he observed so regularly done before the Affairs of Trade were put under Commission as aforesaid. Says he has lately perused and read the Minutes and Records of 8th and 17th October 1685 of the Committee for Trade and Plantations, relating to a Matter then in Contest between Lord Baltimore and Mr. Penn, whereby it appears that they attended the Board on both those Days, and that on the 17th of October the Lord Baltimore had undertaken to procure an authentick Copy of a Report made by the Commissioners for Foreign Plantations on 4th April 1738, touching the Differences between Lord Baltimore's Predecessors and William Cleyburne about the Isle of Kent; From whence it seems probable that the Paper, from which this Copy was made, was first offered to the said Committee by Lord Baltimore in October 1685. And says the produced is a true Copy of that Paper in the said Book.

Charles Dickenson [Lib. A. fol. 19. Int. 38. fol. 27.]

That he is Office-Keeper and Servant to the Council Chamber of his Majesty's Privy Council, and has been so ten Years or upwards; and saith that the Council Registers of the Acts, Orders, Reports, and Proceedings of the Privy Council, and of the Lords or Committee of Privy Council, of the Year 1638, are in Being, in the said Office. And saith that he hath carefully examined the Council Registers, in order to find out the Entry of an Order or Report made the 4th of April 1783, upon the Petition of William Clayborne relating to the Isle of Kent; and saith that he did find several Entries in the Council Registers, wherein the Orders and other Acts of the said Year 1638 are entred, of the very Date of the 4th of April 1683, relating to other different Matters, but this Deponent could not nor did find any entry therein of the said 4th April 1638 of any Report or Order of the Lords or Committee of Privy Council which related to William Clayborne and the Isle of Kent; though he carefully searcht in the said Council Registers for the same.

What adds to this Proof is, that the pretended Order of 4th April mentions a supposed prior Reference of Clayborne's Petition to that Committee. But there is no such Reference neither to be found, so that it's manifest the whole is an Invention.

4TH BRANCH. shewing that the Swedes, the Dutch, and the Duke of York, successively, held the Lands now called the three Lower Counties, under the Names of New Sweden, New Netherland, South River, Delaware, Sandhook, from the Year 1630 downwards. That the principal Seat of Government was then at New York. And Lord Baltimore's Ancestors never possess—also of the Conquest from the Dutch in 1664.

John Rambo of New Jersey aged 79 [Lib. B. fol. 36. Int. 27. fol. 37.]

Knows the Province of Pensilvania, is acquainted with Newcastle, and has been at the Place commonly called the Whorekills, but is not otherwise acquainted with the three Lower Counties. Knew the Province before it was called Pensilvania, being upwards of 70 Years ago [before 1670] Has heard from his Father and other old People, that the said Countries were originally settled by the Dutch and Swedes, but by which of them first does not remember to have heard. But knows that the same Countyies have been since under the Government of the English. Has heard that the said Countries were first called New Swedeland by the Swedes, And knows that the same Countries were, afterwards called South River by the Dutch, and sometimes were called Delaware River. And that the Province of Pensilvania has been called by that Name, ever since William Penn's being Proprietor thereof: but by what Names the said three Lower Counties were since severally called knows not. Knows the Bay and River of Delaware, which as he has heard was formerly called South River, but, after the coming of the English were called Delaware River and Bay. Has been informed by the Sailors, that, when they come in from Sea and arrive at Bombay Hook, anciently called Bombkeys hook, they suppose and take themselves to be at the Head or End of the Bay, at the Beginning or Entrance of the River. That Newcastle was formerly called Sandhook by the Dutch, and, since the same has been in the Hands of the English, has been called Newcastle, and does not know or remember to have heard the same called by any other Names. Does not know nor has heard, that the said three lower Counties were anciently divided into Counties, but has heard that the Creek at Lewis town, near the Capes, was called the Whorekills. Does not know, nor ever heard, that the said Province of Pensilvania, and the three lower Counties or any part thereof, were ever under the Government of Lord Baltimore.

William Peterson of New Jersey aged 92. [Lib. B. fol. 24. Int. 27. fol. 25.]

Has known the Province of Pensilvania and the Land between

Newcastle and Whorekill, formerly called Sandhook, a long time, and before William Penn came into the Country; but can't ascertain the exact Time of his first Knowledge, nor does he know that any part of the Land between Newcastle and Whorekill was ever called Kent; when he came into the Country the said Province, and the Land there called Sandhook were in Possession of the Dutch, under the Government of the Province now called New York, at that time called Manhadas. And has heard from the Swedes, that the said Province and Land were possesst, by People of their Nation, before the Possession of the Dutch. That the said Province and Land were formerly called New-Netherland by the Dutch, but after the Arrival of William Penn here they were called Pensilvania and Newcastle. He knows the Bay or River of Delaware, and never heard it called from the Mouth between Cape May and the Whorekill, where it enters into the Sea, upwards, by any other Name than the Bay or River. Has never heard, or known that the Province of Pensilvania or the Counties of Newcastle, Kent and Sussex, or any of them, have been under the Government of Lord Baltimore Proprietor of Maryland.

Samuel Preston [*Lib. B. fol. 312. Int. 27. fol. 336.*]

Has heard and believes that the Bay and River were formerly under the Government of the Dutch, and were then called South River by the Dutch, and also in some old Dutch Maps which he has seen. Has also heard that the Swedes had formerly some Pretensions in those Parts.

Thomas Norron aged 40. [*Lib. C. fol. 488. Int. 27. fol. 502.*]

Has heard from many old Dutch People, Inhabitants of the City of New York, and of ancient Dutch, Swedes, and other ancient Inhabitants of the County of Newcastle, and believes, that all the Lands on the West side of Delaware River and Bay, from the Ocean up to about the Falls of Delaware, were under the Dutch Government, whose principal Seat was at the said City of New York formerly called Manhatans; their whole Possessions in those Parts being at that time called New Netherlands. Says he is the more confirmed in this Belief because it appears from the Dutch Records at the City of New York, that the said Lands on the West side of Delaware were under the Government of the Dutch from 1630 to 1664. By which Records it also appears that about 1637 the Swedes made Encroachments upon the Dutch Settlements, on the West side of Delaware River aforesaid, which produced many Quarrels and Differences between the Dutch and Swedes that continued till near or about 1647 or 1648. About which time, it also appears by the said Records, that the Swedes, who then continued within the Claim of the

Dutch, became subject to the Dutch Government. And that, by the said Records, it further appears that the Dutch Possession and Government continued till 1664; at which time the said Lands on Delaware were reduced to the Subjection of the King of Great Britain. Has never heard or believes that Pennsylvania and the three lower Counties were ever under the Government of the Proprietor of Maryland, but has heard, by ancient Inhabitants of the said Counties, that some People of Maryland burnt and destroyed the Town of Lewes, formerly called Whorekill, the Truth whereof appears more plainly to this Deponent from a Letter, upon Record in the City of New York, which appears to be sent from Francis Lovelace, Governor of New York, to the Governor of Maryland, complaining that one Jones, with some others, as dissolute as himself, came to the Whorekills, rifled the Houses of the Inhabitants, and used them very ill; and likewise demanding satisfaction for said Injuries.

5TH BRANCH, proving where the true Susquehannah Indian Fort formerly stood, which is mentioned in some of the Proceedings in 1680.

James Hendricks aged 73. [Lib. C. fol. 743. Int. 131 fol. 744. and 132. fol. 748]

Knows Part of Cecil County in Maryland, and Lancaster, Chester, and Philadelphia Counties in Pennsylvania. Does not know the Bay of Chesapeake, but knows the River of Susquehannah, Part of which lies in Maryland, and Part in Pennsylvania. Has seen Indian Forts and Indian Towns; apprehends the Difference between an Indian Fort and Town is, that the first is an House or Number of Houses surrounded by Stakes of Wood and a Bank of Earth cast up, and the other is only a Number of Cabbins, built near each other, without being so surrounded. Says that he, near fifty Years ago, saw about 40 Indian Cabbins or Houses upon the upper Point of Land which forms the Mouth of Octorara Creek that runs into Susquehannah River aforesaid, within about Half a Mile of the said Creek and River; which Town had Stakes of Wood, and a Bank cast up round it. That the Affirmant was then told, by some of the Indians there residing, that they called the same Place Meanoek, which they said, in English, signified a Fortification or Fortified Town. Has also seen the Ruins of another such Fortified Town, on the East side of Susquehannah River aforesaid, opposite to a Place where one Thomas Cresap lately dwelt. That the Land there, on both sides of the said River, was formerly Conajocula.

Further says that the Indians, who lived in the said last mentioned Town before he saw the same, were moved from thence, lower down (to) the said River to Conestoga. [Int. 132. fol. 748] Has known the said River Susquehannah, near fifty Years, and first became acquainted with it, by searching thereabout for Mines. That he knows the Place on the said River called Conestoga, and that near Susquehannah, near fifty Years, and first became acquainted with it, by searching thereabout for Mines. That he knows the Place on the said River called Conestoga, and that near 50 Years ago [that must be 1690 or after] he and another Person travelled to Conestoga, and this Affirmant understanding the Indian Language, enquired of several of the Indians there, whether any Christian People had ever travelled so high up the said River as Conestoga aforesaid? and was informed by them that there had not, but that this Affirmant and his said Companion were the first; for which reason this Affirmant does believe no Christian People had ever, before that time, travelled so high up the said River.

Two Reasons why the Upper Fort could not be the Susquehannah Fort, mentioned as agreed upon before the Lords of the Council in 1680.

- 1st, No Christain had ever been up so high in ten or twelve Years after that time, to know that there was any Fort there.
- 2d, The Land there was not Susquehannah Land, it was Conajocula, which is the Name of another Nation of Indians.

Ergo the lower Fort, at the Mouth of Octorara Creek was the Fort mentioned, before the Lords of the Council in 1680.

And that precisely falls in, and coincides, with my Lord Baltimore's running his Line presently after, viz. in 1683, from the Place where that Fort was, viz. the Mouth of Octorara Creek.

As to which Fort our Evidence continues very strong and clear.

John Hans Steelman [Lib. C. fol. 749. Int. 131. fol. 750.]

Indian Trader, aged 85. Is acquainted with the greatest Part of Maryland and Pensilvania, and is well acquainted with the Bay of Chesopeak and Susquehannah River, and some part of the said River lies in Maryland, and some part of it in Pensilvania. Has frequently seen both Indian Towns and Indian Forts, and says the Difference between an Indian Town and an Indian Fort is, that an Indian Town is a Number of Indian Houses or Cabbins built or set near together, and an Indian Fort is such a Town, fortified or surrounded with a Breast-work of Poles or Stakes of Wood set up, and a

Bank of Earth thrown up about them. Says that about forty or fifty Years ago, he saw an Indian Town wherein were Indians then residing, at the Point of Land at the upper side of, and about Half a Mile from, the Mouth of Octorara Creek, which runs into Susquehannah River aforesaid; And at the side of, or near to, the said Town this Deponent then also saw an Indian Fort, consisting of a great Number of Poles or Stakes of Wood set up, and a Bank of Earth thrown up about the same, as herein before described, which the said Indians then told this Deponent had been the Indian Fort. Says he also remembers that one Jacob Young, did, before or about the same time, shew this Deponent the Ruins of another Indian Fort which stood at about three Quarters of a Mile from the said first mentioned Fort, and where the said Jacob Young then also shewed this Deponent several dead Mens Bones, and told him that a great Battle had been fought there by the Indians.

Elizabeth Murphy aged 43 [Lib. C. fol. 754. Int. 131. fol. 755.]

Knows some Parts of Cecil and Baltimore Counties in Maryland, and some Parts of Lancaster, Chester, and Philadelphia Counties in Pensilvania, knows the River Susquehannah, but does not know the Bay of Chesapeak. Says Part of the River Susquehannah lies in Maryland and Part in Pensilvania. Has seen Indian Forts and Indian Towns, and that the Difference between an Indian Town and an Indian Fort is, that the first is inclosed with Wood, by some called Pallisadoes, and Banks of Earth, and that the latter is a Place where their Houses or Cabbins are built, and they plant their Corn without such Inclosure. Says that upwards of 30 Years ago, she saw a Place on a Point of Land, between the Mouth of Octorara Creek that runs into Susquehannah River aforesaid and the said River, near to the Mouth of the said Creek, where, her Father Jonas Erskine, since deceased, informed there had formerly been an Indian Fort. That, when she saw the same, there appeared a large Bank cast up round it, and the Tops of the Pallisadoes that had been there appeared to be rotted off, and the Stumps of them remained in the Ground. And says that her Father, who lived at the same Place many Years, by the Licence of the Indians, informed her there had been a great Battle fought there, and shewed her the Bones of several Persons buried in the Cliffs of the Rocks, which he said were the Bones of Indians slain in that Battle. That the Indians who had formerly resided at the Place, were removed from thence when she saw it: and then lived at a small Distance from it. Says that her Father, likewise, at the same time, said to her this Affirmant, "That you may remember it, there, over the Creek (pointing to a Place

"over Octorara Creek aforesaid.) I saw the Lord Baltimore
"set his Compass to run the Line."

Margaret Allen aged 39 [Lib. C. fol. 759. Int. 131. fol. 760.]

She knows Susquehannah River, and very well distinguishes between an Indian Fort and Town: And says that, near 30 Years ago, she lived with her Father Jonas Erskine now deceased, at a Place near the Mouth of Octorara Creek which runs into Susquehannah River, where the Remains of an ancient Indian Fort, a Bank, and some part of the Loggs with which it had been surrounded appeared. That she often heard her said Father, and several Indians, who resided very near the same Place, say that, at the same Place, there had formerly been an Indian Fort. And says that she saw there, great Numbers of human Bones, which her Father informed her, had been slain in many Battles fought there. And that she often, pickt up great Numbers of Stone Arrow Points, and Stone Hatchets there.

6TH BRANCH, Proving by whom the Lower Counties were possest, when Mr. Penn first went thither in 1682, and also the actual Delivery of Seizin to him then.

Samuel Hollingsworth aged 67. [Lib. B. fol. 57. Int. 28. fol. 59.]

Has known the Province of Pensilvania and County of Newcastle since 1682, but has not been well acquainted with the two Lower Counties of Kent and Sussex. Resided in Newcastle County from 1682 to 1701, and then removed to Chester County, where he has resided ever since. First arrived at Newcastle in 1682, and, then, understood from his Father and others, that the Plaintiffs Father was gone down to Maryland to meet Lord Baltimore: and, in a few Days after, saw him return, from thence as 'twas said, in a Riding Habit. At that time there were several Families of Swedes and Dutch, settled upon each side of Christiana Creek as high as the Tide Water flows, and, on the lower side of Brandy-Wine Creek; But there were few, or no Settlements back in the Woods, that he knew of, that being the Year when the Back Woods first began to be settled.

John Musgrove aged 73. [Lib. B. fol. 67. Int. 28. fol. 68.]

Came into the Country in 1682, and lived in Newcastle County four Years. Well remembers he first saw William Penn in the Year 1682 at Robert Wade's House in the Town now called Chester in Pensilvania, where the said William Penn then generally lodged, and Affirmant also.

Joseph Wood, Carpenter, aged 81. [Lib. B. fol. 4. Int. 28. fol. 5.]

Knew the Country now called Pensilvania before it was called

by that Name. Came from England and arrived in the Bay of Delaware about 1678, and the Counties Newcastle, Kent and Sussex, at that time, were governed by Sir Edmund Andros, who was then also Governor of New York under the Duke of York. Has resided in Pensilvania ever since. That William Penn arrived at Newcastle about 1682, where the Deponent then was at Work as a Carpenter, where he, then, saw Ephraim Herman and John Moll, make Livery of Seizin, of Newcastle aforesaid, in the Name of all the adjacent Lands that belonged to the Duke of York, to the said William Penn, by delivering a Turff and Twig from the Land, and Water and Mud from the River, by vertue of a Power from the Duke, as the Deponent understood, and which be heard read.

William Peterson of New Jersey, aged 92. [Lib. B. fol. 24. Int. 28. fol. 28.]

Came into the Country about 1658, and lived for 20 Years after on Christiana Creek about three or four Miles from the Mouth of it, and has ever since resided in New Jersey. Saw William Penn, at his first Arrival in the Country, which he well remembers, having seen some Persons, then make Livery of Newcastle, then called Sandhook, and the River, by delivering to him some Water and Earth.

NOTE, The Defendant has cross examined both the last Witnesses to many other Matters.

7TH BRANCH, to prove the Petition from the Inhabitants of the Lower Counties in 1682. to be united to the Province of Pensilvania, also an Indian Purchase then made, and a Copy of a Demand made upon Mr. Penn by Colonel Talbot, which was in 1683.

Patrick Baird, aged 47. [Lib. C. fol. 763. Int. 117. fol. 764.]

Has lookt on the Paper Writing B. B. which purports to be A Copy of a Commission given by Charles Lord Baltimore to Colonel George Talbot, to demand of the Plaintiffs Father all the Land on the West side of the River Skuylkill that lay to the Southward of the 40th Degree Northerly Latitude, according to an East Line run as is therein mentioned, with the Copy of the said Demand, and also a Copy of the Answer, given by the said William Penn, to the said Demand; which Copy of the Answer he believes is subscribed with the proper Name and Hand-writing of the said William Penn. And the Reason of his Belief is from the great Similitude of the said written Name, to the Name of William Penn, which he has seen subscribed to many other Papers, and which he was informed by divers

Persons, were the proper Hand-writing of the said William Penn. Says he was appointed Secretary of Pensilvania in July last, and by virtue of the same Appointment, did receive sundry Books and Papers which were lodged in the same Office, and, amongst those Papers, did receive the said Paper B. B. Has seen another Paper D. D. which he takes to be an Original Paper containing a Petition from sundry Persons formerly Inhabitants of the Counties now Newcastle, Kent and Sussex, to the Proprietor of Pensilvania, praying for a Union and Incorporation of the said Counties with the said Province, and he received the same at the same time, and in the same manner as the other. Has seen another Paper Writing F. F. and believes the same to be an Original Paper, purporting to be a sale of Lands from divers Indians to John Moll. And believes the Endorsement thereon, whereby, Moll released the same to the Plaintiffs Father, is an Original Writing also, and he received that Paper likewise, at the same time, and in the same manner, as the other.

8TH BRANCH, relating to the Names which the lower Counties have been called by, under the Dutch, the Duke of York and Mr. Penn, the making them into Counties in 1682, and their being called the Territories of Pensilvania.

Samuel Preston aged 75 [Lib. B. Fol. 312. Int. 8. Fol. 315.]

Has been acquainted with the County of Kent on Delaware about 60 Years. And with the Province of Pensilvania and the Counties of Newcastle and Sussex about 53 or 54 Years. The said County of Kent when he first knew it was generally called St. Jones's. Has heard that the said County (now Sussex) before he knew it, had been generally called the Whorekill. And that the said three Counties have frequently been called by the Names of the three lower Counties, and, The Territories of Pensilvania, both by William Penn and his Adherents, and also by other Persons in general.

Abraham Allman aged 50 [Lib. B. Fol. 236. Int. 8. Fol. 236.]

Was born in, and is pretty well acquainted with Newcastle County, has been at Philadelphia, and has been in Kent County, but knows nothing of Sussex County; and he never heard the said three Counties called by any other Name than as aforesaid.

James Logan aged 66 [Lib. B. Fol. 76. Int. 8. Fol. 92.]

That Delaware Bay and River, whilst they were under the Dutch, as he has collected from his Reading, were called South River; and the upper Part of the three Lower Counties was called Sandhook, and the lower, Whorekill: That, when the

Country called New Netherlands (of which the Lands on both Sides of the South River were Part) were taken from the Dutch, by the English, about 1664, according to the best Information he could ever obtain, the said Lands on both Sides of the said River, were generally called Delaware; And that, upon taking the said Country called New Netherland, the upper Part of the said three Counties, formerly called Sandhook, was called the County of Newcastle, by which Name the Town there built by the Dutch was and is known to this Day. And the lower Part, towards the Capes, still retained the Name of Whorekill; by which Name the small Town, also built by the Dutch, near the Cape was distinguished. That afterwards the said Two Districts, of Newcastle and the Whorekill, were divided into three Counties, by erecting one in the middle of them called St. Jones's. And that, sometime after, the Governor of New York changed the Name of the lowest Part of the said Land called the Whorekills, into that of Deal County. And after the Arrival of William Penn, Proprietor of Pensilvania, he, having obtained from the Duke of York a Grant of the said Counties situated on all the Western Side of Delaware from the Province of Pensilvania Southward, changed the Name of the County of Whorekill or Deal, to that of Sussex; and the Name of the said Town of Whorekill, to that of Lewes; and also changed the Name of the County called St. Jones's to that of Kent; and erected a Town therein, which he called Dover; but the Town and County of Newcastle still retain their former Appellation. And says that by an Act of Union made by the Representatives of the Province of Pensilvania and the said three Counties, the whole Government of the said Province and Counties was united, under one Legislative Assembly and so continued, under the Name of the Province of Pensilvania, and the Territories thereto belonging, from the Year 1683 to the Year 1704, from which time, hitherto, they have had separate Assemblies, He has not heard the said Counties called by any other Name than he has mentioned, unless to the Name of Delaware, some Persons might have added the Word Settlement.

Thomas Noxon aged 40 [Lib. C. Fol. 488. Int. 8. Fol. 496.]

Has been acquainted with Pensilvania and the three lower Counties about twenty Years. Has frequently heard the lower Counties called the Territories of Pensilvania, in Maryland, in Pensilvania, and in other neighbouring Governments, and has heard them called the three lower Counties. Ever since he has been well acquainted with them, they have been generally called the three lower Counties of Newcastle, Kent and Sussex. Has formerly heard the said Counties, by some ancient Dutch

people residing in New York, called by the Name of South and South River. And from the Dutch Records at New York has learnt that, from 1630 to 1664 that Part, now called the three Lower Counties was generally called South River, particularly that Part where Lewes now stands was called Whorekill; where Newcastle now stands, was first called Sandhook, afterwards Fort Casimier, and after that New Amstel. Has also learned from the English Records at New York, that, from the Conquest of New York and the said three Counties by the English in 1664, to near or about 1680, the said Counties were sometimes called South River, afterwards Delaware River, and Delaware Bay, sometimes one, and sometimes the other, respecting the several Places in those Records severally meant, but, more particularly by the Names of Newcastle and Dependances, and Whorekill and Dependances. That, in or about 1680 the said Counties were distinguished into three Districts; and that Part now called Sussex County, still retained the Name of the Whorekill and Dependances; the Part now called Kent County, was, about that time called St. Jones's, and afterwards Deal; and the Part, now Newcastle County, was then called Newcastle and Dependances, (but does not remember that it appears from those Records that the said Counties were then called by the Name of Counties) which last mentioned Names they continued to bear till 1682, when it appears by the same Records that Mr. Penn purchased the Land composing the said Counties from the Duke of York. Has also learned from the Records, within the said three Counties, that, soon after the said Purchase, Mr. Penn erected the said Lands into Counties, by the Names of Newcastle, Kent, and Sussex, which Names they now bear.

9TH BRANCH, To prove Colonel Talbot's running a Line in 1683 from the Mouth of Octorara Creek by Order of Lord Baltimore, for a Division, called Octorara Line, Colonel Talbot's Line, and Lord Baltimore's Line; and afterwards building a small Loghouse of a few Logs, within and below that Line, for a Fort. (which themselves afterwards deserted) and that that Line was always regarded by Us; and for more than 40 Years by them also.

Samuel Preston aged 75 [Lib. B. Fol. 312. Int. 25. Fol. 335.]

Heard of one Colonel George Talbot who lived in Maryland, and had considerable Interest with, and was a great Favourite of, the late Lord Baltimore, and bore a great Sway in Maryland; but whether he held any Post or Place there knows not.

John Musgrave aged 73 [Lib. B. Fol. 67. Int. 25. Fol. 74.]

Knew Colonel George Talbot, and has heard that he lived in Maryland.

Samuel Hollingsworth aged 67 [Lib. B. Fol. 57. Int. 25. Fol. 66.]

Knew Colonel George Talbot, and has seen a House, on the West Side of the Head of Elk River, which he was informed, was the House he lived in.

The same [Int. 23. Fol. 61.]

That one Evening, in or about 1683, Colonel George Talbot of Maryland, with 4 or 5 others, came to the House of the Affirmant's Father, and requested Lodging for that Night, and being welcomed into the House, upon Conversation between his Father and Talbot, concerning the Business Talbot was then about, the Affirmant heard Talbot acquaint his Father, that he was then, by Lord Baltimore's Orders, running a Line to divide the Province of Maryland from the Province of Pennsylvania, which was to be the North Boundary of Maryland; that he had begun the said Line, at the Mouth of Octorara, and had, and was, to run it, from thence due East to Delaware. That they returned to his Father's House the next Night, and then the said Talbot informed his Father that they had finished the said Line. That the Affirmant the next Day saw a Line of marked Trees, which he then, and many Times afterwards understood, was the Line run by the said Talbot, and which he saw frequently after, and so well remembers that he believes he could shew its Course at this Time; and understood that it ended a little below the Mouth of Naaman's Creek: That the said Line was sometimes called Talbot's Line, sometimes Maryland Line, but, generally, Lord Baltimore's Line. Has heard there was a Fort built, (soon after running the said Line) by the Order of Lord Baltimore, some Miles to the Southward of the said Line, near Christiana Bridge, in order to keep Possession. That he never saw the said Fort, but understood it was a little Loghouse, that hardly deserved the Name of a Fort.

John Musgrave, aged 73 [Lib. B. fol. 67. Int. 23. fol. 70.]

That about 1683, Colonel George Talbot, with some others, came to the House of Valentine Hollingsworth, the Affirmant's Master, and requested Lodging for a Night which being granted, upon Discourse between Talbot and the Affirmant's Master, the said Talbot, in this Affirmant's Hearing, told him he was running a Line from the Mouth of Octorara to Delaware River, by Order of the Lord Baltimore, for a Division Line between Lord Baltimore and Mr. Penn. That the said Talbot and his Company departed next Morning, and returned to the Affirm-

ant's Master the next Night: and then, said he had finisht the said Line. That very soon afterwards he saw a Line of markt Trees, which, he was informed, stood in the Line run by the said Talbot, and were markt by him, which he knew a long time afterwards. Does not know where the said Line ran into Delaware River, but has heard, 'twas a little below Naaman's Creek. Does not know, or has heard, that the said Line was run by any Authority or Direction from William Penn.

Samuel Gellibrand [*Lib. A. fol. 91. Int. 9. fol. 120.*]

Proves an Exhibit Botra No 20. to be a true Copy of an Original Letter from William Penn. to the Committee for Trade and Plantations remaining now in their Office, dated 14th August 1683, wherein Mr. Penn relates some Interviews and Disputes he had already had with Lord Baltimore in America.

And now came on the very busy Contest at the Council-Board, when there were so many Hearings in the Years 1683, 1684, and 1685, between Lord Baltimore and Mr. Penn.

Samuel Gellibrand [*Lib. A. fol. 91. Int. 10. fol. 122.*]

Proves an Exhibit, being Copies of Petitions and Orders, &c. in May and February 1683, and August 1685, remaining now at the Board of Trade. That Exhibit being markt Botra, No 21.

The same [*Int. 11. fol. 125.*]

He proves the Minutes of the Proceedings, and Acts of the Committee, during those three Years, from 17th April 1683, to 7 November 1685. It is Exhibit Botra No 22.

NOTE—During that long Contest, Pensilvania being in its Infancy, and the Proprietor attending those Hearings, Lord Baltimore took the opportunity, to build, in that Wilderness, unsettled Country, what is now called a little Fort: of which we shall make good use, after we have shewn that Pensilvania, and indeed both Sides, paid a great regard to that ex parte Octoraro Line, so run by Lord Baltimore's Order in 1683.

Samuel Hollingsworth, aged 67. [*Lib. B. fol. 57. Int. 24. fol. 65.*]

Has heard that the Part of the Line which he has before mentioned, which was markt (towards Octorara) was regarded by the People inhabiting on both Sides of it, as the Division between the Provinces of Maryland and Pensilvania, but that Part thereof which run thro' Newcastle County (towards Delaware) he never understood, was, in any sort, regarded as such a Division Line.

John Musgrave, aged 73 [*Lib. B. fol. 67. Int 24. fol. 72.*]

That the Inhabitants of the Province of Pensilvania and Maryland, for a long time after running the said Line, had so

great a regard to the same, that no Incroachments were made beyond it, on either side: But, of late, he has heard, some Encroachments have been made by the Maryland Officers, but does not know it, living far from thence. Does not know that the Proprietors of Pensilvania, their Agents, Commissioners, Magistrates, Surveyors or Officers, have transgress the said Line, or that any Lands have been granted, by or under their Authority, or any Jurisdiction exercised, to the Southward of that Line.

• *John Bull, aged 69. [Lib. B. fol. 15. Int. 22. fol. 16.]*

Knew the Town called Newcastle, about 1677, or 1678, which was then settled by Dutch People, and called Sandhook, which, with the County of Newcastle, was then governed by Governor Andros, the Governour of New-York under the Duke of York. That about 54 Years ago (1686) his Father shewed him a small Log-house standing near Christiana Bridge, on the West Side of Christiana Creek, about 5 Miles from Newcastle, and told him that was Talbot's Fort, and that it was kept by Talbot's Men. That the said Fort was built amongst the Inhabitants of the County of Newcastle, who owned Mr. Penn for their Proprietor and Landlord, several of whom lived between the said Fort and the Province of Maryland. That this Deponent was informed the Land whereon the Fort stood, was taken up, before the Fort was erected, by a Company under the York Government: and heard one Thomas Ogle and his Brother John, say it was their Land, and that they claimed under their Father who was one of the Patentees; but knows not, nor ever heard, that it was taken up under the Government of Maryland. That the said Fort was about thirteen or fourteen Feet long, and about 10 Feet wide, covered with Slip-Wood, and could not cost, in the Deponent's Judgment, above three or four Pounds. That the Design of the Lord Baltimore, as he has been informed, in building and keeping Men in the said Fort was, to keep Possession of the Place, which he claimed. That about six or seven Irish Men, esteemed Roman Catholicks, kept the Fort, who behaved peaceably towards the Inhabitants, amongst whom they frequently went. That he knew of no Inhabitants near the said Fort, or within the County of Newcastle, who owned the Lord Baltimore's Authority at that time: But has heard there was a Tract of Land surveyed under the Lord Baltimore, within three Miles to the Westward of the said Fort, which was unsettled. Believes the Inhabitants of Newcastle County could easily have dispossessed those who kept the said Fort: but they neglected to do it, because the Men behaved themselves quietly and civilly to them. That the said Men had sometimes Plenty of Provisions, but were generally in Want,

which he knows, by their frequent going down to Maryland, and there pressing Provisions. That they lived in the Fort, to his Knowledge about two Years, and has heard they lived, in all about three or four Years, and left it upon some of their being Frost-bitten, since which time no Person, pretending Authority from, or owing the Jurisdiction of, Maryland, was ever in possession of the said Fort, or the Land thereabout, to the Knowledge of the Deponent.

**John Garretson, aged 77. [Lib. B. fol. 7. Int. 22. fol. 8.]*

Has known the County of Newcastle, as long as he can remember. Says it was at first, under the Government of the Governour of New-York, and when his Power expired, has been under the Government of Mr. Penn, the Father of the Plaintiffs, and his Descendants. That upwards of 50 Years ago[and he was examined, and so were all the American Witnesses, in the Year 1740] there was a Fort built, and kept, by Lord Baltimore on the North Side of Christiana Creek, about five Miles distant from Newcastle. That there were but few Families settled thereabouts; at that time, Four of which, besides his own, lived between the said Fort and the Province of Maryland, but more that lived between the Fort and Maryland he can't certainly remember, which Families own'd Mr. Penn for their Proprietor and Landlord. That the Land, whereon the said Fort was built, was taken up, before that time, for the Use of one Ogle, either under the Government of New York or the said William Penn, but is uncertain which. That the said Fort was about 14 or 15 Foot long, and built of Logs, and covered with Clap-boards, and could not cost above two or three Pounds, and was fronted with a few Palisadoes about the Height of a Man. Believes the Design of Lord Baltimore in building the Fort, was to take Possession of the Place. That the Fort was kept, sometimes by one or two, but never above 7 lusty Irish Men to the best of his Remembrance, who lived very peaceably with the Inhabitants. That they were sometimes in the Fort, at other times abroad, but one or more always remained in the Fort. Does not remember any Persons who lived near the Fort, or in the County of Newcastle at that time, owned the Lord Baltimore's Authority. Believes the Inhabitants of the same County, who owned Mr. Penn's Government, could easily have dispossessed the People in the Fort of the same, if they had resolved so to do; but that they declined so doing, because they lived peaceably amongst them. That the People in the Fort were chiefly supplied with Provisions from Maryland, and sometimes lived plentifully, at other times in Scarcity, and stayed there between 4 and 5 Years. That the leaving the Fort was

occasioned by the Men's getting fuddled, and lying out in the Cold, whereby some were froze to Death, and others lost their Limbs. Since which time, to the Knowledge of the Deponent, no Person pretending Authority from, or owning the Jurisdiction of, Maryland, has been in the Possession of the said Fort, or any Lands thereabouts. And the Reason of this Deponent's Knowledge of what he has declared on this Interrogatory is, that he lived very near to the said Fort at the time of its Building and Settlement, and was frequently in it.

NOTE. Both these last Witnesses about the Fort, the Defendant has cross-examined to their being interested in the Event of the Cause only. But the Defendant himself has examined a great many Witnesses (in Number) many of which speak only to this Fort, and to another Action, about burning the Whore-kills; which, if he had had Shame or Humanity in him, he should rather have concealed. And his own Witnesses, prove every Fact, above spoke to about the Fort.

John Taylor, aged 43, the Defendant's own Witness; but cross-examined by us [Lib. C. Fol. 648, Ind. 23, Fol. 649.]

Says, that near 20 Years ago, his Father, was Surveyor of Chester County, shewed this Witness a Line of markt Trees, running Eastward from the Mouth of Octoraro Creek, on Susquehanna River, and said it was called Lord Baltimore's or Colonel Talbot's Line, and that it divided Maryland from Pennsylvania. This Witness's Father then said, he had been informed by an ancient Man, an Inhabitant of Maryland, that the said Line was run by Colonel Talbot, by the Order of Lord Baltimore, for a Division-Line as aforesaid; and that he this Affirmant's Father had written Orders or Directions from the Commissioners of Property in Pennsylvania, not to survey Lands to the Southward of that Line. The Affirmant's Father then also said that he had run the said Line Eastward, from the Mouth of the said Creek upwards of 20 Miles. Says that the said Line, for the length of six or seven Miles was afterwards shewn to him by several ancient People, who informed him that they attended Colonel Talbot in 1683, for several Miles, when he run and markt the said Line. About 15 Years ago the Affirmant having occasion to enquire, concerning the Division between the said Provinces, the said Line, near the Mouth of Octoraro Creek aforesaid, was shewn to the Affirmant by one Joseph Askew, [Note, two other Witnesses prove Askew to be dead] who resided thereabout, and informed this Affirmant either that he saw the said Line run, or, had been informed that the same was run, by Colonel Talbot, and 5 or 6 Gentlemen from Maryland, by Lord Baltimore's Order, and was gen-

erally called by the Inhabitants there Lord Baltimore's Line. And that, afterwards the said Jonas Askew rid many Miles along the Line with this Affirmant, when the Marks on the said Trees were very clear and apparent. Says also that, about 15 Years ago, he was Sheriff of Chester County, part of which, to the Southward, joins to the Northern Part of Cecil County in Maryland, and about that time being in Company with John Hack, who was then Sheriff of Cecil County, they together saw the said Line which as it was said was run and markt by Colonel Talbot, and they both called, and esteemed it their Division-Line.

James Logan, aged 66.] Lib. B. Fol. 76. Int. 23. Fol. 133.]

That in the Summer of 1700, the Proprietor William Penn took a Journey into Maryland, and, in his Return, was attended by divers Gentlemen of Maryland in his Journey from thence, up the River Susquehannah, which Gentlemen having accompanied him as far as Octorara Creek, or River, stopt there, in the Ford as this Affirmant was soon after credibly informed by some of the Pensilvania Gentlemen, and there took leave of him, with Expressions to this purport, viz. Now we have waited on your Honour, into your own Province, and must desire leave to return; To which the said Proprietor answered, I hope I have been in it some time ago; which Information led the Affirmant to enquire into the Reason, and he was assured, thereupon, that the Lord Baltimore had in 1683, come up to the Mouth of the said Creek or River of Octorara, and having made some Observations there, had directed Colonel George Talbot to proceed from thence, Eastward to Delaware River, and to mark on the Trees a Line of Division; and that the Affirmant hath been assured, by divers Persons, that they saw the said Colonel Talbot and his Company in their said Journey to the side of Delaware River, and had frequently seen divers of the said markt Trees, and traced the Line from thence, Westward for some Miles. That, upon the Truth of this Information the Affirmant so intirely depended, that being Secretary and Commissioner of Property, upon the Application of Cornelius Empson, William Brown, Andrew Job, and divers others, who petitioned for a Grant of that Tract of rich Land now called Nottingham, at the Affirmant's Instance it was wholly declined, till such time as the Applicants had produced unquestionable Evidence, that the most Southern Part of the said Tract lay at least the Distance of one Mile to the Northward of the said Line, run from the Mouth of Octorara as aforesaid; upon which the said Tract was granted to them. That the Affirmant never heard the said Line disputed for a Boundary,

till by a Letter from Charles Carrol then Agent for Maryland, the Affirmant found the said Agent did not own the said Line as a peremptory Division which induced the Affirmant to enquire further into the certainty of the said Boundary; and in order thereunto he found a Copy of a Writing left by the said Colonel Talbot at Philadelphia, with Nicholas More President, in the Absence of the Proprietor William Penn, who was then at New York, containing a Commission from the Lord Baltimore to the said Colonel Talbot, dated the 17th of September 1683, requiring him to repair to Schuylkill, and there demand, from the said William Penn, possession of all the Lands on Delaware, to the Southward of the said markt Line, as also a Demand in writing dated the 24th of the same Month, made by the said Colonel Talbot, in pursuance of the said Commission; as also a Writing signed by the said William Penn, dated the 31st Day of October then next following; which being upon the same Paper with the aforesaid Copies, being, as the Affirmant is well assured, signed by the said Proprietor's own Hand, immediately induced him to believe, and the Affirmant does firmly believe that the said Copies of the Lord Baltimore's Commission, and of the said Colonel Talbot's Demand, are true, genuine, and Authentick: and the Affirmant also procured sundry other Vouchers for the Truth of the said Line; but, as the Affirmant is not immediately furnish'd with any of them, refers to them when produced. And further saith, that he heard divers times from Henry Hollingsworth, who formerly was Clerk, and Surveyor in Chester County and is long since dead, That one of those who were employ'd to run the said Line, and afterwards lived in the Town of Chester, had frequently affirmed in his hearing, that after the first day's Journey, the said Colonel Talbot made a Sett off to the Northward, before he resumed the said Line on an Eastern Course.

James Logan, [Lib. 76. Int. 24. fol. 142.]

Saith there never was, to his Knowledge, and he has all the moral Certainty that can be had, in such case, that there never was any Grant or Survey, made by the Proprietors of Pensilvania, or under their Authority, of any Lands, more or less, neither have they themselves, or any Person by their Authority, exercised any Acts of Government to the Southward of the Bounds, Limits or Line of Division aforesaid, and to the Westward of the Limits of the three Lower Counties aforesaid. And saith, that after the said Settlement of Nottingham and the Settlers thereof, by their large Improvements, had rendered themselves considerable, the Lord Baltimore's Agents for Maryland, (as the Affirmant conceives) beginning to think these Parts worth their Notice, ceased not to claim them: in so much, that

in the Year 1722, not only Isaac Taylor the Surveyor of Chester County aforesaid, was taken, by a Warrant from the Justice of Maryland, for surveying some Land situate to the Northward of the said Line, but also Elisha Gatchell, going to visit the said Surveyor, and to inquire into the Cause of his being so apprehended, was likewise seized, and both the said Taylor and Gatchell were committed to the Custody of the Sheriff of Cecil County, and sometimes to the Prison it self, and were much harrassed for near one whole Year, being removed thence to the supreme Court of Annapolis, and there, at length acquitted: but the Affirmant having taken a Voyage to London, in the Fall of the Year 1723, and making a Complaint thereof to Charles Lowe, then the Lord Baltimore's Agent in London, the said Lord and Hannah Penn, Executrix of the late Proprietor William Penn's Will, entred into an Agreement dated the 17th of February 1723, that the Possessors of Lands in both Provinces should remain quiet and unmolested, during the Space of 18 Months, in which time it was hoped, the Boundaries would be effectually settled: of which Agreement signed by the Lord Baltimore himself, and the said Hannah Penn, jointly with Henry Goldney and Joshua Gee two of the Trustees for the said Province of Pensilvania, and witnessed by Simon Clement, the said Charles Lowe, and the Affirmant, three Originals of the said Agreement were executed, on each side; which Agreement being transmitted to the respective Governors of both the said Provinces, with Orders on each side, that the same should in puruance of the said Agreement, be proclaimed in each Province; the said Orders were accordingly obeyed in the Province of Pensilvania, and were in general observed in both Provinces, till, after the Arrival of Governor Ogle in Maryland, in the latter End of 1731, notwithstanding he well knew that the Lord Baltimore had entered into an Agreement with the Proprietors of Pensilvania, for putting a final Period to all their Disputes, of which he, by his Letter, accordingly advised Colonel Gordon, then Governor of Pensilvania, yet he renewed the former Disturbances.

John Taylor, aged 43. [Lib. C. Fol. 648. Int. 24. Fol. 653.]

Ever since he knew the said Line, as far as he knows, or has heard and believes, the Pensilvania Inhabitants in general, and the Proprietors of that Province, their Agents, Commissioners, Magistrates, Surveyors and Officers, have always esteemed, regarded and observed the said Line as a Division between the Provinces of Maryland and Pensilvania, and neither the Pensilvania Proprietors, nor any under their Authority, did survey any Lands, or exercise any Acts of Government, to the Southward of that Line, to the Knowledge or Belief of this Affirmant.

That by covering with several of the Inhabitants of Maryland before 1726, or 1727, always heard and believes that the People of Maryland, till about those Years, thought the said Line was the Division of the same Provinces. But has heard and believes that since those Years, Lands have been surveyed under the Proprietor of Maryland, and Acts of Government have been exercised by his Magistrates and Officers, to the Northward of the said Line.

10TH BRANCH, about the Indian Purchases made by the Dutch and Swedes, and Mr. Penn, and of his exercising the Government of the Lower Counties from 1682, to 1702.

James Logan, aged 66. [Lib. B. Fol. 76. Int. 12. Fol. 121.]

That the Dutch, as he is well assured, and, as he believes, the Swedes, having purchased from the Indians, the greater Part of the Lands below Duck Creek in the said three Lower Counties, the said William Penn's Commissioners in 1685, for a large Consideration, made a very extensive Purchase of Land from the Indians, from the said Duck Creek, as far North as Chester or Upland Creek, which is reputed by Travellers, no less than 60 Miles, which last mentioned Place, in common Estimation, lies not above five Miles to the Northward of the Northern Boundaries of the said Counties. And saith, that only the said William Penn, and his Deputies, exercised the Government in and over the said Province of Pensilvania, and three Lower Counties of Newcastle, Kent and Sussex, from 1682, to 1702, (excepting for some time in the Years 1693 and 1694, to the beginning of 1695, when King William and Queen Mary, by Commission to Benjamin Fletcher Esq; then Governor of New York, authorized him to take the said Government under his Care, alledging for a Reason the Proprietor's absence from the same; but by other Letters Patent, dated in August 1694, restored the Government of the said Province and Counties to the said William Penn and his Heirs as before and saith William Penn, only made two Voyages from England to America between the Years 1680 and 1703.

11TH BRANCH, Proving Mr. Penn's constant Possession as Landlord and Proprietor ever since 1681 and 1682; his granting out of the Lands; appointing great Numbers of Collectors and Receivers of Quit-Rents in all the Lower Counties, and receiving Quit-Rents.

Samuel Preston, aged 75, [Lib. B. Fol. 312. Int. 9. Fol. 317.]

Has lived in the three Lower Counties and Pensilvania about 52 Years, was Sheriff of Sussex about 1690, and in some little

time before or after, a Justice of Peace for that County. In 1700 was a Councillor for that County by the Election of the People. Has been a Member of the Governor's Council for the Province of Pensilvania above 20 Years last. Has been Treasurer of that Province about as long. Has been an Alderman for the City of Philadelphia about 30 Years, was Mayor of that City in 1711. That ever since he has known the said three Lower Counties and the Province of Pensilvania, they have been in the Possession of the Duke of York and William Penn, and those claiming under him, as Proprietors and Landlords of the same, successively. When he first knew Kent County, it was the Practice of the County Courts in the said Lower Counties, as he was informed and believes, to grant Warrants and Survey Lands, and thereupon Patents were granted for those Lands by the Government of New York; but that, always after William Penn obtained the Government of the same Counties and Province of Pensilvania, hitherto, he the said William Penn, and those claiming under him, have, successively, appointed the Officers, Commissioners, and Managers of Property, in the said Province and Counties. And never knew that the Defendant, or his Ancestors, ever were in Possession of the said Province of Pensilvania, or the said Counties, as a Proprietor or Landlord of them. Or that the Officers, Commissioners or Managers of Property for the Lord Baltimore ever granted out any Lands or Plantations within the same Province or Counties. He has known that William Penn deceased, and the Widow Hannah Penn, Mother of the Plaintiffs (likewise deceased,) by Virtue of the said William Penn's Will, and the present Plaintiffs, have been severally and successively in the Possession of the same Province and Counties, as Landlords, Landladies, and Proprietors of the same Province and Counties; and has heard and believes that William Penn was in the Possession of the Province of Pensilvania from 1681, till this Witness first knew the same Province. That he knew the said three Lower Counties before 1682. And since that Year, the said William Penn, and those claiming under him, have, always been in Possession of the same. This Witness never held any Office which gave him an opportunity of inspecting Records, and thereby becoming acquainted with Grants and Titles of Lands in the said Province and Counties, but has occasionally, seen several Grants of Lands in the said Province and Counties, which, since the Year 1682 were all made by the said William Penn, and those claiming under him; and hath never seen any Grants for Lands in the same Province or Counties from or under the Lord Baltimore, or any of his Ancestors.

NOTE—The Defendant has cross-examined Mr. Preston to a whole Sett of Interrogatories.

James Logan, aged 66. [Lib. B. Fol. 76. Int. 9. Fol. 97.]

From 1701 has held the several Offices of Secretary, Commissioner of Property, General Receiver of the Proprietors Dues, and one of the Governor's Council, and continued in them many Years. On Governor Gordon's Death in 1736, he was, for near two Years, till the Arrival of the present Governor, President of the Council, and as such, had the Administration of the Government in Pensilvania, and then, divested himself of all Offices in the said Government. That for seven Years from the Year 1716, he was President of the Court of Common Pleas for Philadelphia County; and from the Year 1731, for 5 Years, he was Chief Justice of the supreme Court of that Province, which he was obliged to lay down, upon his coming to the Administration of the Government. That ever since he knew the said Province and three Lower Counties, the said William Penn and his Descendants, have always been in Possession of the same Province and Counties as Proprietors and Landlords thereof, except when the said William Penn was obliged to vest the same in Trustees for the Payment of a considerable Debt contracted by him; during which time the said William Penn, his Trustees and Descendants, have successively appointed the Officers, Commissioners, and Managers of Property, for granting out Lands in the said Province and Counties—he has—neither heard, nor does believe, that Lord Baltimore, or his Ancestors, ever had any Possession or Management, in or of the said Province, or the said Counties, or any part of them, except by an Intrusion and forcible Entry made, in or about 1685, by some of Lord Baltimore's Officers, upon the Land of one John Ogle, near Christiana Creek, of which the said Ogle had been long in Possession, and building a small inconsiderable Fortress there. Says he is very sure the said William Penn only, was always in Possession of the Province of Pensilvania from 1681, till this Witness first knew that Province, and also of the said Counties from the Year 1682, till this Witness's first Knowledge of them. He has seen several of the Records of the said Province but it was never his Business to inspect any of them. That as Secretary as aforesaid, he had occasion, ever since the Beginning of the Year 1700, to inspect great Numbers of the most ancient Grants as well as others, and Titles of the Tenants and Occupiers of Lands in the Province of Pensilvania and the said Counties, made before the Year 1700; and never saw one Grant, during that time, of any Lands in the said Province or Counties, from Lord Baltimore, or any of his Ancestors, or from any other under his or their Authority. The most ancient of all which Grants that he has seen, were from Mynheer Stuyvesant, who was Governor for the Dutch at

the time when the Lands were under their Government; and after the Year 1664, from Richard Nichols, Francis Lovelace, or Sir Edmund Andros, the several Governors at New-York; and, from the Year 1682, from the said William Penn or his Commissioners. That during the Year 1700, and to November 1701, the said William Penn signed all the Grants of Lands in the said Province and Counties; and that from November 1701, this Witness, as one of the Commissioners of Property for William Penn and the Trustees aforesaid, signed almost every Grant for Lands in the said Province and Counties, until the Death of the said William Penn; and from his Decease this Witness, being duly authorised for that purpose, continued to sign all the Grants that were made of any Lands in the said Province or Counties, until the time the Plaintiff Thomas Penn arrived in the Province in 1732; the other Commissioners of Property surceasing to act during the Witness' Absence on a Voyage to England. That the Number of those Grants and Titles was great, but he never kept any Account of them.

NOTE—The Defendant cross-examined this Witness, only as to his being interested in the Event of the Cause, or holding any disputed Lands, which he, in the most precise, full and absolute Terms utterly denied.

These two Persons, having long known the Country, and gone thro' all these publick Offices, were the properest Persons to know these Matters, but what they say in General, and at once, is no more than what is confirmed, peaceably, by a Cloud of other Witnesses, (even the Defendant's own Witnesses,) and by the Records themselves.

**James Steel, [Lib. C. Fol. 559. Int. 127. Fol. 625.]*

Has known Pensilvania and the three lower Counties above 32 Years. He was and acted, for many Years, as a Justice of Peace in Kent County. And was, afterwards one of the Justices of the Supreme Court for the said three Counties. About that time was also appointed and continued for many Years, Receiver of the Quit Rents and other Revenues accruing to the Proprietors of Pensilvania in the said Province, and also in the said three Counties. For about seven Years past has acted as Receiver General under the Pensilvania Proprietors for that Province and the said three lower Counties. Ever since his first Knowledge of the said Province and Three Counties, Mr. Penn and his Family and Descendants, or Persons under their Authority, have all along, to this present Time, been in Possession of the said Province and three Lower Counties as Landlords and Proprietors thereof, and have all along appointed the Magistrates, Officers and Commissioners of Property for the granting of

Lands within the said Province and Counties. And never knew Lord Baltimore, or any of his Ancestors, in Possession of the said Province and Counties as Proprietor or Landlord thereof, since this Affirmant knew the same: nor did he ever know the said Defendant, or any of his Officers, Commissioners or Agents, to grant out the several Lands within the said Province and three lower Counties, or any of them. And has heard and believes the said Mr. Penn was always in Possession of the said Province and three lower Counties, from 1681, as Proprietor or Landlord thereof, unto the time he first knew the same.

Benjamin Eastburn aged 44. [Lib. C. fol. 678. Int. 128. Fol. 1714.]

Has seen in the Office of Surveyor General of Pensilvania, and the three Lower Counties, (which he now holds) Great Numbers of Original Warrants and Surveys for the granting Lands in the said Province and Counties: which all appear to be made either under the Government of the Province of New York, or by Courts who acted under the same Government, or under the Authority of Mr. Penn deceased, formerly Proprietor of Pensilvania, or those who have claimed under him; but never did see any Grants or Titles for or to Lands in the same Province or Counties, which were made or derived under the Defendant or his Ancestors, or his or their Commissioners or Officers. That by Warrants now lodged in the said Office, it appears that Mr. Penn and those claiming under him, before June 1735, have granted near and about 330,000 Acres of Land, lying in the said Counties of Newcastle, Kent and Sussex. And that the Dutch and English Governments, at New York aforesaid, had granted very large Quantities of Land there, before Mr. Penn's Right to the said Counties, to the amount of near 100,000 Acres as he believes, under which same Grants divers Persons, there residing, claim and enjoy those Lands to this Day.

** James Steel [Lib. C. Fol. 559. Int. 128. Fol. 629.]*

Has seen several Grants for Lands within Pensilvania and the Lower Counties, not only amongst the Records kept at New York, but also in the Hands of several of the Occupiers of such Lands, bearing Date before 1681, and made by the Governor of New York. And that under some of those Grants some of such Occupiers as he believes still continue to hold their Lands, under the Plaintiffs, but the greater Number of the Occupiers and Claimants of the Lands under such old Grants, have since renewed their Grants for such Lands with and under Mr. Penn and his Descendants, and those claiming under him. He has also seen great Numbers of Grants and Titles of Lands within the said Province and three lower Counties, bearing Date since

1681, as well upon and amongst, the several Records kept in and for the said Province, and Counties, as in the Hands of several of the Owners and Occupiers of such Lands. And says that all the same Grants appeared to him to have been made by and under the Authority of Mr. Penn, his Family and Descendants, and does not remember ever to have seen any Grants for Lands within the said Province and three lower Counties, which were made by or under the Defendant, or any of his Ancestors, or his or their Commissioners, Agents or Officers for Property. Says that by and from his inspecting and examining the several Memorials, Minutes and Entries of Lands granted within the said three lower Counties of Newcastle, Kent and Sussex, which are kept in the Office of the Surveyor General for the said Province and three lower Counties, he computes and believes there were near or about 100,000 Acres of Land within the said three lower Counties granted before 1682, by or under the Authority of those under whom William Penn claimed; and that, since that Time, and before June 1735, there have been near or about 328,000 Acres of Land, within the said three lower Counties, granted by Mr. Penn, his Family and Descendants, and those claiming Authority under him and them. Says that by and from several ancient Books, Papers and Memorials, now in his Custody as Receiver General under the Plaintiffs as aforesaid, he finds and believes, that, soon after the Grants of the said three lower Counties to William Penn. John Hill, Samuel Preston, William Clarke, and Thomas Fisher were appointed by or under William Penn to be his Receivers and Collectors of Rents and Quit Rents, from the Tenants and Occupiers of Land in the said County of Sussex; and that George Martin, William Berry, Samuel King, and William Rodeney, and sometimes the said William Clarke, were also appointed by or under the said William Penn to be his Collectors and Receivers of such Rents in the said County of Kent. And also that Edward Gibbes, George Dakeyne, Cornelius Empson, and John French, were also appointed by or under the said William Penn to be such his Collectors and Receivers in and for the said County of Newcastle, And that James Atkinson, was in like Manner appointed to receive such Rents in all the said three Counties. All and every of which said several Collectors and Receivers this Affirmant finds by the same ancient Books and Papers, and believes, did actually receive, divers and considerable Quit Rents from the then several Tenants and Occupiers of Lands in each of the said three Counties, for the Use of the said William Penn. And says that, since his being appointed Receiver and General Receiver as afore set forth he has also received, from time to time, from the Tenants and Occupiers

of Lands in each of the said three Counties divers and considerable Quit Rents for the Use of William Penn, his Family and Descendants. And says he believes and is well satisfied, that all and every of the said Tenants or Occupiers of Lands, within the said three Counties, which are herein before mentioned to be held under the said ancient Grants from the Governor of New York as aforesaid, have at one Time or other, paid some Part of their Quit Rents, for such Lands, to, or to the Use of the said William Penn, his Family or Descendants, or some of them.

James Logan, aged 66. [Lib. B. fol. 76. Int. 10. fol. 106.]

That William Penn did, from time to time, appoint the several Officers for collecting the Quit Rents from the Tenants and Occupiers of Lands in the said three lower Counties; and that no other Officers or Collectors were ever appointed for that purpose by or under any other Person but the said William Penn and Persons under his Authority, from the time of the said William Penn's first becoming Proprietor of Pensilvania and the said three Counties, as this Witness ever heard or understood. And says there has been considerable Quit Rents received from the Tenants in the said three Counties, by the said Officers and Collectors so appointed by the said William Penn and under his Authority as aforesaid. Says the Names of some of the said Collectors of Quit Rents so appointed by the said William Penn and under his Authority, were Samuel Land, Edward Gibbs and George Dakeyne, with several others, for the County of Newcastle; and William Clarke, principally, for the Counties of Kent and Sussex; But there were divers others whose Names do not at present occur to his Memory.

12TH BRANCH, That constant Annual Assemblies, have been held, for the Lower Counties, under Mr. Penn from 1682: Courts of Justice always held there, under his Authority: And none of the Inhabitants of those Counties ever elected into the Maryland Assembly.

Samuel Preston, aged 75 [Lib. B. fol. 312. Int. 30. fol. 337.]

Says that upon Proprietor Penn's first coming to Pensilvania and settling the Constitution thereof, and of the three Lower Counties, the Members or Representatives, who were elected by the People in and for the Province, and in and for the said Counties, sate in and made but, one united House of Assembly under the Government of the said William Penn: And that the said three lower Counties were thereupon called the Territories of Pensilvania; But, some time after Mr. Penn's second De-

parture from Pensilvania, the Representatives of the People divided, and sate in, or made two separate Houses of Assembly, one for the Province of Pensilvania, and the other for the three lower Counties; which were, from that time, called the three lower Counties of Newcastle, Kent and Sussex on Delaware. Doth not know how many Assemblies have been held in the said Province and Counties, but says the same have been, always, held under William Penn his Family and Descendants. Says there have been Courts of Judicature held in the said three lower Counties ever since his being acquainted therewith, which have always been, and still are, held under the said William Penn his Family and Descendants, and not under the Defendant or his Ancestors, or any other Person or Persons whatsoever.

James Logan, aged 66. [Lib. B. fol. 76. Int. 30. fol. 154.]

Says that from 1682 there have been, to the best of his Knowledge, constant Annual Assemblies, and also Courts of Justice, held, down to this time, in Pensilvania and the said Lower Counties, under the Authority of William Penn and his Descendants. And never knew or heard of any Assemblies or Courts of Judicature whatsoever, held in the said Province or the said three lower Counties, or either of them, under the Authority of the Defendant or any of his Ancestors.

John Ball, aged 69. [Lib. B. fol. 15. Int. 30. fol. 22.]

Has known the Lands now called Pensilvania 64 Years, and the County now called Newcastle sixty two Years, in which County he has lived 54 or 55 Years. That formerly the Representatives of the said three Counties, and of the said Province, composed one joint Assembly, but, for near 30 Years past, the Representatives of the said Counties have made a distinct Assembly. All which Assemblies have been always held under the Proprietors of Pensilvania, and never under the Proprietors of Maryland. That there have been Courts of Judicature held in the said Counties, which as long as he remembers, were always held under the Proprietors of Pensilvania, and not under the Proprietors of Maryland; but has heard there were Courts held at the Town, now called Newcastle, formerly Sandhook, and at the Town now called Chester in Pensilvania, formerly called Upland, by the Dutch.

**John Garretson, aged 77. [Lib. B. fol. 7. Int. 30. fol. 13.]*

Has known the Province of Pensilvania and the County of Newcastle, which was formerly called Sandhook, as long as he can remember, but was not well acquainted with the lower Counties, but heard the lowest County was called Whorekill,

and the next above it Jones's. That, for about 30 Years past the Province of Pensilvania and the three lower Counties have been represented by different Assemblies, but, before that time the Representatives were joined, and composed but one Assembly for the whole. That the said Assembly for the said Counties, during these 30 Years, have been elected annually, and were always held under Mr. Penn and his Descendants, and never under Lord Baltimore; That Courts of Judicature have been always held in the said Counties as long as he can remember, under Mr. Penn and his Descendants only.

Jeremiah Langborne, aged 66. [Lib. C. fol. 719. Int. 30. fol. 721.]

Has known Pensilvania and the three lower Counties above fifty four Years. Ever since he can remember till 1701 the Representatives chosen by the People of the said Province and Counties did compose one joint Assembly to make Laws for Government of said Province and Counties. And in 1699 or 1700 this Affirmant was chosen a Representative for Bucks County, and met the other Representatives for the Province of Pensilvania and the Representatives chosen for the said Counties, at Philadelphia; where they made one joint Assembly. And that from 1701 or 1702 (to the best of his Memory) to this Time, the Representatives of the said Province and Counties have composed two distinct Assemblies. Believes there have been Annual Assemblies held for the said Counties (either in Conjunction with that for Pensilvania, or separately as aforesaid) ever since he knew the same. Never heard, or knew that any such Assemblies were held by or under any other Authority than that of Mr. Penn. Has heard and believes that Courts of Judicature have been held, from time to time in the said Counties, ever since he knew them. which as he has heard and believes were always held under the Authority of Mr. Penn.

John Webster of Maryland aged 72, Defendant's Witness cross-examined [Lib. E. fol. 22. Int. 5. fol. 23.]

Says there is an Assembly of the Representatives of Maryland, which is a Part of the Legislature of that Province, but knows not, that any Persons were ever elected, in any of the three lower Counties, to serve in that Assembly.

Benjamin Tasker of Maryland aged 50, Defendant's Witness, but cross-examined [Lib. E. fol. 49. Int. 5. fol. 52.]

Speaks in the self-same Words with Webster.

13TH BRANCH. To prove that the very Acts of Assembly past in Lord Baltimore's own Province of Maryland do from time to time call the Lower Counties, the Territories of Pennsylvania, and tax Goods coming from thence, or carried thither, as Goods coming to or going from another distinct Province, And that those Laws are from time to time enforced and put in Execution.

Edward Chambres of Maryland aged 51. [Lib. C. fol. 456. Int. 111. fol. 459.]

Has lookt upon the produced printed book, intituled, A Collection of the Laws of Maryland, collected and printed by Authority at Annapolis in 1727. Says that book is well known in Maryland, and received and allowed as Authority in the Courts of that Province as the Laws thereof. As to Page 49 in the Act to prevent exporting of Tobacco by land, says that by the Words (Territories thereunto) immediately following the Words Province of Pennsylvania in the third Line, and again in the fifth Line, are meant the three lower Counties of Newcastle, Kent and Sussex on Delaware, as he understands and believes. As to Page 157 in the Act laying an Imposition on Negroes and other Things, says that the like Words there, have the like Meaning as he understands and believes.

Edward Chambres [Int. 122. fol. 462.]

Has lived in Maryland 11 or 12 Years, and has held the Office of Collector of his Majesty's Customs for the Port of Pocomoke in that Province during all that time. Is acquainted with the Trade and Navigation of that Province, and with the Duties arising upon Shipping, and Customs or Duties upon Goods imported or exported into or out of that Province. Says that Ships and Vessels trading into and out of the said Province pay Tonnage of 17 d. Sterling per Ton, which is paid to the several Naval Officers out of that Province—Says that Ships and Vessels trading into and out of the said Province pay Tonnage of 17 d. sterling per Ton, which is paid to the several Naval Officers of that Province, and that 14 d. of the said Tonnage is received for the use of the Defendant, and the remaining 3d. for the use of the Governor of that Province. But by what Authority the 14 d. a Ton is demanded, or received, he knows not. Has lookt on the 44th Page of the said Book of the Laws of Maryland, into the Act there for confirming to the Governor 3d. a Ton upon Ships and Vessels, And says that Ships or Vessels built in or belonging to the People of the Counties of Newcastle, Kent and Sussex; and trading into Maryland, do and have paid the said Duty ever since he came into his Office of Collector, but for how long before knows not. And has lookt on the 30th Page, and says

the People of the said Counties who have such a seated Plantation as there mentioned, where they have with their Families, resided for a whole Year, within the said three Counties, or any of them, are not intitled to the Privilege of Residents in the Province of Maryland within the Meaning of that Act. And the Reason of his Belief is because such People of the said Counties live in another Government.

William Runsey of Maryland, aged 42, the Defendant's Witness being cross-examined [Lib. E. fol. 25. Int. Additional 5. and 6. fol. 26. and 28.]

Says he holds the Naval Office of Cecil District under the Governor of Maryland, the Deputy Commissary's Office of Cecil County under Mr. Dulany Commissary General, the Deputy Surveyor's Office of the said County under Mr. Harris, Surveyor General of the Eastern Shore, is Receiver of the Rents of two Mannors for Lord Baltimore, under Authority from the Governor, is a Justice of Peace in Cecil County, and a Representative for that County in the Assembly. And says he has lookt on the Book produced markt 3. And it's well known in Maryland, and is generally received and allowed as of Authority in all Courts within that Province, as the Laws of that Province, and has lookt upon the 49, 73, and 157 Pages, and that by the Words (Territories thereunto belonging) in those several Places immediately after the Words (as of the Province of Pensilvania) he understands and believe the three lower Counties of Newcastle, Kent and Sussex on Delaware are meant.

Note—This Man with all these Offices is one of those who gave the Opinion as a Surveyor that the Circle should be only two Miles distant, and he is one that swears to an Opinion about the Extent of Lord Baltimore's Charter.

Benjamin Tasker of Marland aged 50, the Defendant's witness, but cross-examined [Lib. E. fol. 49. Int. 5. Additional, fol. 57. Int. 3. Original, fol. 51. and Int. 6. Additional, fol. 58.]

Says fol. 57. That he holds the several following Offices of Trust and Profit in Maryland, viz. One of the Defendant's Council of State, Agent, and General Receiver, and Naval Officer of the Port of Annapolis, by Appointment of the Governor of Maryland, also Surveyor of the Customs by Commission from the Commissioners of the Customs at London, and Mayor of Annapolis by Election pursuant to the Charter of that City, Fol. 51. That he never knew or heard the three lower Counties called by any other Names than Newcastle, Kent and Sussex, and the three lower Counties, and (as he thinks) by the Name of the Territories of Pensilvania; but whether they were called so by the Government or Legislature

of Maryland, knows not. [He did not know what we were going to ask him, for] fol. 49. he has lookt upon the printed Book markt No 3. and says it's a Book well known in Marlyand. and is constantly received and allowed as Authority in all the Courts of Judicature within that Province as Part of the Laws of that Province (except such of the Laws therein contained as have been repealed, annulled or expired since the publishing the same) And he says that by the same Words, Territories thereunto belonging, in the Laws, fol. 49, 73, and 157, the three lower Counties of Newcastle, Kent and Sussex, are meant and intended.

John Webster of Maryland the Defendant's Witness cross examined, aged 72. [Lib. E. fol. 22. Int. 4. fol. 23.]

Has heard several of the common People dwelling in Sussex County, call the three lower Counties, the Territories of Pennsylvania.

Abraham Allman of Maryland, aged 50. [Lib. B. fol. 236. Int. 112. fol. 237.]

Does not know of any Bread, Beer or Flour being seized, by any Officer of Maryland, for being imported from either of the three lower Counties, all which he names. But says he himself has once paid Duties, to William Rumsey Naval Officer in Cecil County [in Maryland] for Rum imported by the Deponent into Maryland from Apoquinimink in Newcastle County. And which Duties the said Rumsey claimed as due and payable under some Law of the Province of Maryland, as the Deponent understood.

John Carnon of Maryland Merchant, aged 45. [Lib. B. fol. 247. Int. 112. fol. 275.]

He never heard of any Bread, Beer or Flour being seized. But has himself paid, and has known several other Persons pay, at sundry times, since 1727, several considerable Sums for Duties of Negroes and Rum imported by him and them, from Newcastle County, into Maryland. And which Duties were paid to Stephen Knight and William Rumsey, as Naval Officers of Cecil County, and due and payable or claimed by them, by virtue of an Act of Assembly of Maryland, as the Deponent understood and believes.

John MacArthur of Maryland, aged 35. [Lib. B. fol. 292. a. Int. 112. fol. 292. b.]

He knows of no Commodities imported from the Lower Counties into Maryland, that have been seized in that Province: But the Deponent formerly brought two Hogsheads and a Barrel of Rum, from Barbadoes, and landed the same at Phila-

delphia, and carried them into Christiana Creek in Newcastle County, and, from thence, by Land into Cecil County. That the Deponent was there informed by William Rumsey (who he believes was Naval Officer there under Maryland Government) that if the Deponent did not pay the Duty of the said Rum, he would seize the same. Whereupon the Deponent paid him the Sum he demanded; and understood and believes it was received from him under the Authority of the Government of Maryland.

George Lawson of Maryland, aged 30. [Lib. B. fol. 302. Int. 112. fol. 303.]

Heard some Rum was seized about two Years ago, as carrying from Newcastle County to the Iron Works in Cecil County, but that the affair was afterwards made up and agreed. He has at several times paid Duty for Rum which he imported into Maryland from the County of Newcastle, unto William Rumsey, as Naval Officer for Cecil County, who claimed and received the same, as the Deponent understood and believes by vertue of and under some Law of the Province of Maryland.

John Scott aged 34. [Lib. B. fol. 304. Int. 112. fol. 305.]

In 1735 he carried Rum from Apoquinimy Landing in Newcastle County, by Land to the Head of Bohemia River in Cecil County in Maryland, and there paid a Duty of 3d. per Gallon for it to William Rumsey, Naval Officer of Cecil District under the Government of Maryland.

Andrew Porter of Maryland, aged 35. [Lib. B. fol. 306. Int. 112. fol. 306.]

Has heard that Duties have been several times paid for Rum imported into Maryland, from Newcastle County to William Rumsey Naval Officer of Cecil County. And this Deponent is now sued by the said Rumsey, for the Duty of Rum, he imported from Christiana Bridge in the County of Newcastle into Maryland; which Suit is now depending in the County Court for Cecil County. And the said Rumsey claims and receives the said Duties, by vertue of or under some Maryland Law, as the Deponent understands and believes.

William Rumsey Naval Officer in Maryland, aged 42. the Defendant's Witness, but cross-examined [Lib. E. fol. 25. Int. 7. Additional fol. 30.]

Has heard and believes that Bread, Beer, Flour, Malt, Wheat, and other English Grain and Tobacco have been imported and brought from the three lower Counties since the making the Act contained in Page 73 of the Law Book, but never heard that any of them were seized by any Officer of Maryland. But has

been informed that some Wheat brought from Nottingham under the Government of Pensilvania, was seized by John Ward of Cecil Comty. That as Naval Officer, by vertue of divers Acts of Assembly of Maryland, he has received from several Persons sundry Duties for Rum, Wine and Negroes, imported into Maryland from Newcastle County. That he brought an Action against one John Carnan in Cecil County, for transporting Hides from Bohemia Landing in Cecil County in Maryland, to Apoquinomy in Newcastle County, with Intention to transport them to Philadelphia, as he apprehended from some Words spoke by Carnon, and recovered Judgment against Carnon in Cecil County Court; but he brought a Writ of Error in the Provincial Court of Maryland, where the Judgment was reverst. The Cause of which, as he has generally heard, was that Apoquinomy was within the Province of Maryland, but has been informed, by one of the Justices of the same Court, it was upon a Fault in the Declaration.

Benjamin Tasker of Maryland, aged 50, Defendant's Witness but cross-examined [Lib. E. fol. 49. Int. 7. Additional fol. 61.]

Remembers that Sir William Keith late Governor of Pensilvania imported into Maryland in a Sloop from Newcastle, a Loading of Bread, Flour, and Beer, since the making the Act, Page 73 of the Law Book, and that Horses have been since commonly imported into Maryland from the said three lower Counties. And remembers that some Horses were seized, during the Continuance of that Act, and that they were acquitted, but for what Reasons can't set forth. Has heard that Duties, for Rum and Wines imported from the three lower Counties into Maryland, have been paid to the Naval Officers of Cecil County in Maryland, by vertue of the Act Page 157 in the Law Book. And has heard that some Hides were seized by William Rumsey, as being exported out of Maryland contrary to a Maryland Act, and were afterwards acquitted, but for what Reasons knows not.

14TH BRANCH, Containing some General Account of the great Expence Mr. Penn was at, and how much he has impaired his English and Irish Estates to settle this Country.

You'll please to remember, under this Head, that though Mr. Penn's Petition for a Grant of Lands in America is worn out, and rendered imperfect, yet there remains enough of it, as it appears more authentically in the Acts of Council thereupon in 1680, to shew that he petitioned for it in Recompence for great debts then due to him from the Crown.

James Logan, aged 66. [Lib. B. fol. 76. Int. 11. fol. 109. The latter Part of his Answer to that Interrogatory. fol. 118.]

After speaking of the Grants of Pensilvania and the Lower Counties made by King Charles and the Duke of York to Mr. Penn, he says, Mr. Penn in 1682 arrived himself in the Province and transported thither from England, a vast Colony, in thirty-two Ships, at sundry times before he himself left the Country in 1684. In which Expedition, during the said William Penn's Continuance in the Country, which did not amount to the full Term of two Years, the said William Penn, as the Affirmant is well assured from the intimate Acquaintance he had afterwards with the said William Penn's Affairs, expended not less than a Sum betwixt Six and Ten thousand Pounds Sterling.

Letitia Aubrey, aged 60. [Lib. A. fol. 134. Int. 40. fol. 145.]

That William Penn, the Plaintiffs Father, was in his Lifetime possess and intituled to a large and considerable Real Estate in England and Ireland, but did not die possess of or intituled to all the same real Estates. For she remembers his selling about 1712 (as she believes) an Estate at Worminghurst in Sussex of the yearly Value of 200*l.* or upwards, and heard he, many Years before, sold another Estate in England, and also an Estate in Ireland of several Thousand Pound Value: and has heard and believes he likewise mortgaged one or more of his Estates. The Reason of selling and mortgaging the same was, as she believes, to raise Money the better to enable him to settle and defend his Colony in America.

John Page, aged 60. [Lib. A. fol. 174. Int. 40. fol. 191.]

Was well acquainted with the said William Penn from 1705 till his Death, and had Opportunities of being well acquainted with his Circumstances and Affairs, which were in a bad Condition. And this Deponent can depose the same, because he was employed as his Attorney or Sollicitor from 1707 till his Death. Knows the said William Penn was a Prisoner in the Fleet from Hillary 1707 to October 1708, at the Suit of Ford and others, for a Debt of above 12,000*l.* owing from the said William Penn upon a Mortgage of Pensilvania, and it was with a great deal of Difficulty that he raised Money for discharging the same. When the Deponent first knew him, he was intituled to a considerable real Estate both in England and Ireland, but did not die possess of and, intituled to all the said real Estates, for in 1707 he sold Part of the said real Estate in England of a considerable yearly Value, at Worminghurst in Sussex, to Mr. Butler since deceased, and afterwards sold a considerable Part of his real Estate in Ireland to Mr. Bernard then Sollicitor General there, and this Deponent was concerned for the said William

Penn in the said Sales, which the Deponent believes were made by him for raising Money to pay his Debts. The Deponent hath heard in the Family, and believes, that before the Deponent's Knowledge of the said William Penn, he had sold or mortgaged some considerable Estates in England, which were his first Wife's Inheritance, for raising Money to enable him to carry on the Plantation of his said Province of Pensilvania.

Ferd. John Paris [Lib. A. fol. 195. Int. 40. fol. 330.]

Never had any great Acquaintance with the said William Penn or with his Circumstances or Affairs, during his Life time; but from 1722, became acquainted with and transacted Business in a great many Affairs for Springett Penn, Grandson and then Heir at Law to the said William Penn, down to the Time of Springett's Death in 1730; and immediately after was employed for William Penn junior, who upon his Brother Springetts Death, became Heir at Law to the said William Penn, and has been concerned in a great Number of Affairs for the the said William Penn junior, till 1739, that he went to reside in Ireland. And by reason of being so employed for the Heirs at Law, has had frequent Opportunities and Occasions to look into the Deeds and Titles of the Estates in England and Ireland, which appeared to have been enjoyed by Proprietary Penn, whereby the Deponent plainly perceived that after 1680, he made considerable Mortgages and Sales of his Estates in England and Ireland, but to what Value can't say, nor how or in what manner he applied the Money thereby raised, but was informed by Springett Penn in his Life time that the Estates, sold off by the said William Penn amounted to a great yearly Value, and as near as Deponent remembers, he mentioned that such Estates so sold off in Ireland only were then of the Value of 1200*l.* per Annum, or thereabouts.

John Jefferys aged 60 [Lib. A. fol. 63. Int. 40. fol. 66.]

Was acquainted with the said William Penn, and served him as Secretary for two Years, from 1705 to 1707, whereby he had some Opportunities of being acquainted at that time, with his Circumstances and Affairs, which, as the Affirmant believes, were pretty much perplext. Says the said William Penn was then possess of, or intitled to, a considerable real Estate in England in Kent and Sussex, and also in Ireland: But, while the Affirmant was his Secretary, or some time afterwards, the said William Penn did, as the Affirmant understood and believes, sell or dispose of his Estate at Worminghurst in Sussex, which, as he remembers, was computed at about 300*l.* a Year, and also part of his Estate in Ireland.

John Jefferys aged 60. [Lib. A. fol. 3. Int. 41. fol. 68]

Whilst he served the said William Penn as his Secretary, he was privy to several of his Accounts; and in or about 1706, the said William Penn employed and directed the Affirmant to write out and state an Account, from Particulars he gave the Affirmant for that Purpose, of the Costs and Charges of his Affairs in Pensilvania and the Profitts arising therefrom; whereby it appeared and was stated, that the Province of Pensilvania and the three Lower Counties of Newcastle, Kent and Sussex, stood indebted to the said William Penn in the Sum of 64,000*l* and upwards, over and above the Profitts he had received therefrom.

15TH BRANCH, That the now Plaintiffs have possest ever since 1726.

Samuel Preston aged 75 [Lib. B. Fol. 312. Int. 16. Fol. 324.]

Says he has lived in Philadelphia ever since 1726, and therefore knows that the present Plaintiffs have been in Possession of the three lower Counties of Newcastle, Kent and Sussex ever since that Time, as Proprietors and Landlords of the same.

16TH BRANCH, Of the Number of Persons settled in each of the three Lower Counties.

Thomas Norxon, aged 40, [Lib. C. Fol. 488. Int. 124. Fol. 525. Further on Fol. 527.]

Says he lives in the County of Newcastle, and is well acquainted therewith, and also with the Counties of Newcastle, Kent and Sussex. That the County of Newcastle is very thick settled, the County of Kent well settled, but not so thick as Newcastle, and the County of Sussex not quite so thick as Kent, there being great Quantities of poor Land in Sussex County. Says there is at least, 1400 Taxables in the County of Newcastle, which he computes and believes make about an Eighth Part of the Inhabitants in that County, [8 times 1400 make 11,200] And that there are two Churches and two Chapels, and also 8 Dissenting Meeting Houses, in the County of Newcastle; and a publick Court-house, and a Prison, and a Market-house, in the Town of Newcastle. And two Market Houses in Wilmington in the said County of Newcastle.

Benjamin Chew aged 18 [Lib. C. Fol. 772. Int. 126. Fol. 773.]

Knows Part of Newcastle County, and lives in Kent County, but does not know Sussex County. That Newcastle County is

pretty thick settled, but Kent County not so thick settled. That he acted last Year as Deputy Clerk of Kent County, and, from a Calculation he made upon a particular Occasion, from the Levy Lists, it appeared there were 1025 Taxables in the same County. That he does not know what Proportion the Number of Taxables bears to the Number of all the Inhabitants of that County, but has heard People, that he esteemed of better Judgment than himself, say they judged they were about 8 or 10 to one [only 8 times 1025 make 8,200]. Does not know what Number of Churches or Meetings there are in that County, and knows of no other publick Buildings therein but a Court-house and a Prison.

**William Till aged 43 [Lib. C. Fol. 740. Int. 126. Fol. 741.]*

Knows the Counties of Newcastle, Kent and Sussex, and formerly lived many Years in Sussex County, but now lives in Philadelphia. Says the said Counties are very well settled. And believes there are about 600 taxable Persons in the County of Sussex, which he believes is about one seventh Part of all the Inhabitants in Sussex County, [7 times 600 make 4200] And that there are in that County, one Church and two Chapels, all under the Care of one Minister of the Church of England, two Presbyterian Meeting Houses, and two Quakers Meeting Houses, and the other publick Buildings are a Court-house and Prison in that County.

17TH BRANCH, Of the very strange Way of granting Out Lands by the Maryland Officers; and the Consequences which they insist arise from the Persons locating such Grants.

Benjamin Tasker Defendant's Witness, but cross examined, aged 50 [Lib. E. Fol. 49. 20th Int. Fol. 53.]

That he is at present Agent for the Defendant, and General Receiver of all his the Defendant's Rents, Rights and Dues in the Province of Maryland.

The same [21st additional Interrogatory, Fol. 54.]

That the Method for authorising the Defendant's Surveyors for laying out Lands is first, to obtain a Certificate to the Judge of the Land Office, from the Defendant's Agent, that his Dues are paid for the Quantity of Land desired, and upon that, a Warrant is granted, in the Land Office, directed to a Surveyor to lay out the Land applied for, and after such Surveyor has made his Return upon such Warrant to the Land Office, and the same is examined and approved, a Patent from the Land Office is thereupon granted: believes that such Surveyors,

sometimes do, and sometimes do not actually run out the Lines of such Surveys, but always do mark or certainly describe, one, or more of the Boundaries of such Lands so by them surveyed; and the said Surveyors always make their Returns upon such Warrants, as if they had actually run out the several Lines.

Griffith Beddoe, the Defendant's Witness, cross examined, aged 39 [Lib. E. Fol. 18. Int. 45. Fol. 19.]

That there are Grants of Lands recorded in the Land Office of the Province of Maryland, which Lands are expressed by those Grants to lie on the West Side of Delaware Bay, and as he is informed lie in the three lower Counties on Delaware: and other Grants of Lands expressed to lie on Christiana Creek recorded in the said Office, which he is also informed, lie within the same Counties: the Names of all which Lands, and of the Persons to whom the Grants were made, do appear in the Exhibits on the Part of the Defendant, numbered (4) purporting to be Extracts or Copies of several Grants or Patents of Land recorded in the said Land Record Books of the Province of Maryland.

The same [Int. 47. Fol. 21.]

That he knows not, nor has he seen, in the Entries of the Land Office of the Province of Maryland, that the Proprietors of Maryland, or their Agents, denied to grant Warrants or Patents for Lands, because such Lands lay, as were supposed to lie, within the Province of Pensilvania, or the three lower Counties on Delaware.

NOTE—They may according to this Method of Granting, grant out even Philadelphia it self, or all Pensilvania, if they set at home and invent imaginary Surveys in a Chimney Corner; and then, the Entries of these Grants are to be topt upon us, as real Grants made by the Defendant, when there is not a single Instance of his having fairly settled any one spot in the Lower Counties.

James Logan aged 66 [Lib. B. Fol. 76. Int. 18. Fol. 125.]

Has conversed divers Times with Philemon Lloyd, who was Agent to the Lord Baltimore, Proprietor of Maryland, on the Subject of granting Warrants at large for Lands to be located at the Pleasure of the Purchaser; and on his blaming the Conduct of some of that Province for their pretending to take up lands far within what had always been reputed the Province of Pensilvania, and, at one particular Time, upon this Witness's mentioning that Matthias Vanbebber, and one of Henry Hollingsworth's Family about 1716, had presumed to survey Lands towards the River Susquehannah, as far Northwards, as the City of Phila-

delphia, which had always been accounted by the People of Pennsylvania not less than 20 Miles within their well grounded Claims, which Practice divers others likewise afterwards attempted, the said Philemon Lloyd alledged in Excuse that those Things were done without the Knowledge, much less the Direction of any concerned in the Land Office of Maryland: for that, their Warrants were at large, for any Lands whatsoever, that were vacant and unappropriated before, within the Bounds of that Province; and it was entirely at Choice of the Purchasers of such Warrants to locate them where they thought fit, at their own Risque; but the present Governor of Maryland, Samuel Ogle, at a Meeting of the Commissioners (of which this Witness was one) appointed by the Proprietors both of Maryland and Pennsylvania, for settling the Boundaries pursuant to the Articles of May 1732, which was held at Newcastle on 30th October in the said Year and the three following Days, upon discoursing the aforementioned Subject of Warrants at large, strenuously insisted that the Division Lines, tho' agreed on, not being yet run, such Warrants issuing from the Office of Maryland, wherever they were located, make the Land, on which they were laid, a Part of the Province of Maryland.

Samuel Preston aged 75 [Lib. B. fol. 312. Int. 18. fol. 324.]

That at a Meeting of the said Commissioners in February 1732, upon some Conversation concerning Encroachments made by the Inhabitants of Maryland and Pennsylvania, Samuel Ogle, then Lieutenant Governor of Maryland, said, That the Land Office in that Province was open, and any Person applying to the said Office, and complying with the Conditions obtained a Warrant for taking up Lands in the Province of Maryland, which he might locate where he pleased, the Boundaries between the two Provinces not being known: whereupon Andrew Hamilton, one of the Plaintiffs Commissioners, asked the said Ogle if the Person obtaining such Warrant should execute it, by an Officer of Maryland, three or four Miles above, or to the Northward of Philadelphia, Whether the Person obtaining the same Warrant would thereby, become a Marylander? The said Samuel Ogle answered, that such Person must be looked upon as his Lordship's Tenant, or Words to that Effect.

**James Steel [Lib. C. fol. 559. Int. 18. fol. 638.]*

That at a Meeting of the Commissioners appointed to run the Lines on the first or second of February 1732, on some Conversation between the Commissioners for Maryland and Pennsylvania touching some Settlements made on the West Side of Susquehannah River under Maryland Warrants, Mr. Ogle, one of the Maryland Commissioners [and Governor] then said that

Warrants for surveying Lands in Maryland were granted at large, and that the Persons who took out, or were possest of such Warrants, had it in their Option, and might locate such Warrants where they pleased: The Pensilvania Commissioners answered that, according to such Position, such Warrants might be located in the Neighbourhood of Philadelphia, or to the Northward of it: The said Ogle replied, that in case such Warrants should be so located, the Persons locating the same ought to be esteemed Lord Baltimore's Tenants, until the Division Lines between the Provinces were actually run and settled.

A most mischievous, and unheard of, Doctrine in America, purely to beget eternal Contests, first invented and closely observed by this Governor Ogle, who has really been the Incendiary, that has defeated the salutary Agreement made between the Parties, as we shall see, even from his own Evidence, by and by.

18TH BRANCH, Of the notorious Scituation of Pensilvania and the lower Counties, both upon one and the same West Side of the River and Bay of Delaware, and of my Lord's going personally, by Land, from the one to the other of them in 1733, which, nevertheless, he has been pleased to swear, in his Answer, are separated by, and lie on different Sides of, that great Bay and River.

James Logan, aged 66 [Lib. B. fol. 76. Int. 7. fol. 91.]

Has been acquainted with Pensilvania, Three Lower Counties, and the Province of New Jersey, above 30 Years; and it is notorious that Pensilvania and the said Counties lie on the West Side of Delaware Bay and River, and the Province of New Jersey on the East Side thereof.

Samuel Preston aged 75 [Lib. B. fol. 312. Int. 121. fol. 450.]

Has frequently travelled, by the Common Road, from Newcastle Town to the City of Philadelphia, which is esteemed about 36 Miles, and there is not any Bay or River that divides the Province of Pensilvania from the County of Newcastle: and verily believes no considerate Man, who travels that Road, can so far mistake, or be ignorant of the Scituation of the said County of Newcastle, as to believe it to be on a different Side of Delaware Bay or River from the Province of Pensilvania, because they are apparently on one and the same Side thereof.

Edward Chambres of Maryland aged 51. [Lib. C. fol. 456. Int. 121. fol. 467.]

In totidem verbis.

William Beckett aged 43 [Lib. B. fol. 277. Int. 121. fol. 277.]

The Defendant's own Witness, cross examined, says the same thing exactly, but in stronger Terms; for he thinks no Man in his senses, that rides that Journey by the Common Road, can be ignorant of the Scituation, or believe them to be of different Sides.

Gideon Griffith aged 45. [Lib. B. fol. 279. Int. 121. fol. 279.]

In the same Words as Mr. Beckett.

George Ross, Clerk, aged 59. [Lib. B. fol. 308. Int. 221. fol. 308.]

Another of the Defendant's own Witnesses, cross examined, says the same thing as Beckett and Griffith, *in totidem verbis*.

Abraham Taylor aged 37 [Lib. C. fol. 477. Int. 121. fol. 467.]

In totidem verbis.

Edward Chambres aged 51 [Lib. C. fol. 456. Int. 7. fol. 457.]

Has been acquainted with Pensilvania, and the lower Counties, above 20 Years, and has seen the Province of New Jersey; and says the Province of Pensilvania is not contiguous to the Province of New Jersey, being separated therefrom by the River and Bay of Delaware which run betwixt them; and that Pensilvania lies on the West, and New Jersey on the East Side of the said Bay and River. And Pensilvania and the lower Counties lie on one and the same Side, viz. the West Side of the said Bay and River.

William Rumsey of Maryland aged 42, the Defendant's Witness, cross examined, [Lib. E. fol. 25. Int. 1. additional fol. 25.]

Says the River Delaware lies between Pensilvania and New Jersey. And that the lower Counties and the Province of Pensilvania lie on the West Side of the Bay or River of Delaware.

Benjamin Tasker of Maryland aged 50, Defendant's Witness, cross examined, [Lib. E. fol. 49. Int. 1. Additional fol. 49.]

Says with great Difficulty, at last, that the Bay and River of Delaware separate Pensilvania, from that Part of New Jersey which he is acquainted with; and that the Province of Pensilvania, and the three lower Counties, as he understands, lie on the West Side of the Bay and River Delaware.

George Ross, Clerk. [Lib. B. fol. 308. Int. 120. fol. 310.]

The Defendant's own Witness, cross examined, swears that Lord Baltimore came to the Town of Newcastle by Land, in Day-time, in 1733, when the Deponent saw him. That he then walked about that Town, stayed there one Night and Part of the next Day. That the Defendant then rode from thence up to Chester Town in the Province of Pensilvania, where this Deponent waited upon him, and from thence went as the Deponent was informed and believes to the City of Philadelphia.

Gideon Griffith [*Lib. B. fol. 279. Int. 120. fol. 290.*]

Confirms the same.

Abraham Taylor [*Lib. C. fol. 477. Int. 120. fol. 487.*]

Has heard and believes that Lord Baltimore was at the Town of Newcastle on Delaware in the beginning of the Year 1733, and that he came from thence by Land into the City of Philadelphia, where the Deponent saw him, and he continued some Days.

19TH BRANCH. Of the Treatys in Order to, and the drawing, perusing and settling the Draught of, the Agreement, the Map, and Mr. Senex's written Opinion, * * * * * and the Execution, by the Partys, of the Agreement in Question, and of the Commissions for running the Lines pursuant thereto.

Ferd. John Paris [*Lib. A. fol. 195. Int. 16. fol. 199.*]

Says, that he became well acquainted with, and known to, the Defendant, at the time, and in the manner following; In 1725, the Earl of Sutherland having made Application to the Crown, relating to the three Lower Counties, there were several Attendances, or Hearings thereon, before his Majesty's then Attorney General; at which Hearings such Application of the Earl of Sutherland was opposed, not only by the Mother of the Plaintiffs, and also by Springett Penn as Heir at Law, then, of Proprietary William Penn, but also by the now Defendant; on which occasion the Deponent acted and appeared, not as Sollicitor for the Plaintiffs, or their Mother, but as Solicitor for another Branch of that Family, namely for the said Springett Penn; and in or about 1729 and 1730, this Deponent became further known to the Defendant, by having often attended him on several Acts of Assembly past in his own Province of Maryland, and on Complaints from thence, of the Clergy there, or other Persons relating to Matters arising in his said Province of Maryland; and that in 1730, this Deponent was appointed by the Assembly of Pensilvania to be their Agent here, and, as such, publicly acted, in London and Westminster, in the publick Affairs of Pensilvania. And saith that about the beginning of 1731, the Deponent accidentally met the Defendant, and falling into Discourse, the Defendant took occasion to mention to the Deponent, that both himself and the Proprietors of Pensilvania greatly suffered, from some Disputes which had for a long time subsisted between them, and their Families, and that he wished they were accommodated, or to the like Effect, as near as the Deponent can recollect; whereto the De-

ponent answered, he had heard a good deal of these old Disputes, and that it did seem to be high time they should be composed, or to such Effect; and acquainted his Lordship that if he would give leave, he the Deponent would acquaint Mr. Penns (who the Deponent believed would be very willing to accommodate that Matter) with what his Lordship had said, or to such Effect; and his Lordship, to the Deponent's Apprehension, then expressed his Desire, that the Deponent would mention to them, what had so passed between his Lordship and this Deponent. Saith that ne the Deponent was, about that time, and for a considerable time before, had been endeavouring to compose a great Difference between William Penn the Younger, (who was then upon his elder Brother Springett Penn's Death, become Heir at Law of Proprietary William Penn) and the now Plaintiffs John, Thomas, and Richard Penn, about Proprietary William Penn's Will, and about his American Estate; and the Deponent apprehending then, that an Agreement, between the Lord Baltimore and Mr. Penns might facilitate the Conclusion of an Agreement between the different Branches of Proprietary William Penn's Family, and might procure better Terms from the Plaintiffs to the said William Penn junior, (who was then this Deponent's Client) for confirming Proprietary William Penn's Will and Disposition of his American Estate, the Deponent was very glad therefore of an Opportunity to promote that other Agreement with Lord Baltimore; and thereupon the Deponent did, very soon after such Discourse had past between the Defendant and the Deponent, take an Opportunity to acquaint the Plaintiffs John and Thomas Penn, and also the Deponent's then Client the said William Penn junior thereof; who declared on their Parts, that they were satisfied how much it was the common Interest of all Parties to settle those old Disputes with the Lord Baltimore; In a short time after which, there was a Meeting had, between the Defendant, and some, if not all, of the now Plaintiffs, at the Ship Tavern near Temple-Bar, on or about 3d June 1731, at which Meeting the Deponent was present; and after the Occasion of that Meeting had been opened, and some Discourse had between them, one of the now Plaintiffs (and to the Deponent's best Remembrance it was the Plaintiff Thomas Penn) produced a small written Map of part of Pensylvania and Maryland, and of some adjacent Parts; and the Defendant, on his part, produced another written Map of the like Places, upon comparing of which two Maps together, they seemed to have in the descriptive Parts of the Places no material Difference that the Deponent could perceive, which Map produced by the

Plaintiffs as aforesaid, is the the Map markt Par. (No 1.) now produced, and each of the said Maps had, then, a Circle or part of a Circle, drawn round the Town of Newcastle. And after a good deal of Conference and Discourse, of the Lord Baltimore's Claim to the three Lower Counties of Newcastle, Kent and Sussex, and also, how high, or how far North, his Head-Line of his Province of Maryland should extend, the Lord Baltimore with a Pencil and Rule, drew, upon his said Map, a strait Line from a part at the Edge of the Land, which was there called Cape Hinlopen, to the Westward a-cross a good Part of the Peninsula, into the Middle, or thereabouts, of the Peninsula, and then, drew another strait Line, Northwards, up to the Top of the Peninsula, and above every Part of the Peninsula, and into the main Land or Continent, (as there described) and until it went, by and above, some part of the Circle: and then he drew another strait Line, Westwards, across the River at the Head of Chesapeak Bay, (at the upper Point of the said second Line) as and for what he then insisted should be his Boundary: and it was then declared by the said Lord Baltimore, that those two first mentioned Lines would leave the three lower Counties to Mr. Penns; and that the third Line above-mentioned should be the Head Line, or North Boundary of Maryland, and the Foot Line or South Boundary of Pensilvania, or to some such Effect: Saith that one of the now Plaintiffs (and to the Deponent's best Remembrance, it was the Plaintiff John Penn) then, with a Pen, drew Lines, upon his Map, how he desired the said Lines should run; which Lines so drawn roughly by the Plaintiff, were much like those drawn by the Defendant, save that the Plaintiff made the general Foot-Line, or South Boundary of Pensilvania, (and consequently the general Head Line, or North Boundary of Maryland) to be lower, or more Southerly, than the Lord Baltimore had done; whereupon a very long Debate and Argument arose, between the Defendant and the Plaintiffs, at what Distance South from the City of Philadelphia, the Foot Line of Pensilvania, or the Head Line of Maryland should run? And the Lord Baltimore at first, (and always so far as the Deponent knows) persisted that such last mentioned Line should be only at 15 Miles Distance below the Parallel, or South of Philadelphia. And the Plaintiffs, or such of them as were at that Meeting, then insisted that that would be too much, or too far, above the Peninsula, and that the North Bounds of Maryland should be at 20 Miles Distance, below the Parallel, or South of Philadelphia: And the Deponent well remembers that the Terms and Proposals for an Agreement did, then, proceed from the Lord Baltimore himself, but no Agreement, was, at that time, concluded between the Parties;

but both sides took time to consider of it. And saith that after such first Meeting, the Deponent was present at a second Meeting, between the Defendant, and some, if not all, of the Plaintiffs, upon or about the 11th June 1731, when a very long Conference was had, between them, whether the Head or North Line of Maryland should be so high, as to be within 15 Miles of Philadelphia, or should be at some greater Distance South of Philadelphia? And the Lord Baltimore then insisted that it should be within 15 Miles of Philadelphia, otherwise, he would not agree, but would take some adversary Measures, or to that Effect; and such of the Plaintiffs as were then there not at all agreeing to the Lord Baltimore's said Proposal and Demand, at that time, the Treaty broke off. And saith that, some time afterwards, the Treaty was again resumed in the following manner, for that the Deponent on or about 6th July 1731, did meet the Plaintiffs John Penn and Thomas Penn, and the said William Penn junior, to consider of a Letter which the said William Penn junior then produced and shewed this Deponent, and said he had received from Lord Baltimore, which Letter intimated that his Lordship had preferred some Petition to his Majesty: whereupon, on or about 9th July 1731, the Deponent did meet the Plaintiffs John Penn, and Thomas Penn, and the said William Penn junior, or some of them, again, together with one Mr. Simon Clements a Relation of theirs, since deceased, in order to prepare an Answer, on the Part of Mr. Penns to that Letter, and to be sent to Lord Baltimore; and he then saw such Letter said to be received by the said William Penn junior, from the said Lord Baltimore, and hath since made very diligent Enquiry after the same, but that the said William Penn junior, having since released to the Plaintiffs, and having lived for several Years last, past as the Deponent assuredly believes, in Ireland, the Deponent cannot obtain the same, or any Account thereof, but is very apt to believe the same is lost or mislaid, and not now in being; and verily believes that a written Answer to such Letter was sent to, and received by the Defendant the Lord Baltimore. For that, on or about 20th of the same July 1731, the Deponent was present at a third Meeting, at the Bedford-Head Tavern, near Covent-Garden, with the Defendant the Lord Baltimore, and (according to the Deponent's best remembrance) every one of the now Plaintiffs, and also with the said William Penn junior, then Heir at Law of Proprietary William Penn, at which time very great Debates and Arguments were used, between them, at what Distance, South of Philadelphia, the Head or North Line of Maryland, or the Foot or South Line of Pensilvania, should run? Whether so near as within 15 Miles of the Parallel of

Philadelphia, (as the Lord Baltimore had before insisted) or, at some, and what greater Distance; and the now Plaintiff John Penn did then insist it should run lower, namely at 18 Miles, South of Philadelphia, afterwards at 17 Miles, and then contended, to the Deponent's now best Remembrance for half a Mile, but the Lord Baltimore appeared to be fixed and determined and declared he would absolutely have it run within 15 Miles of Philadelphia, or else would not agree, or to that Effect: insomuch that the Deponent apprehended, the Treaty would then again have broken off; whereupon the Deponent went aside, with the Plaintiff John Penn, out of the Room where the Company was met, and represented to him that, as his own Family Difference with his Father's Heir at Law, was then, in a manner agreed upon, and as there had been continual Disputes and Contests between his own Family, and Lord Baltimore's Family, for about 50 Years then past, about Boundaries, and about the said three Lower Counties, the Deponent really thought, it was for the Plaintiffs Benefit, to heal all those old Disputes together, and to accept Lord Baltimore's Proposal, and put all their Affairs at Peace, or to some such Effect; and the Deponent used such Arguments as seemed proper on that Occasion. Whereupon the Plaintiff John Penn and the Deponent returned into the Room again, where the Company and the said Lord Baltimore was, and, after some further Endeavours then used, on the Part of Mr. Penns, to induce Lord Baltimore to agree to run his Head Line, at more than 15 Miles South of Philadelphia, (out which his Lordship absolutely refused) it was at length, finally, but verbally, agreed between them, at that Meeting, that the said Head Line of Maryland, should be an East and West Line, to run 15 Miles below, or South of the Parallel of Philadelphia, and the Parties congratulated each other thereon; and another Meeting was agreed to be had on or about the 22d of the same July, to consider how to carry such Agreement into Execution. And saith that, accordingly, on or about 22d of the same July 1731, the Deponent was present, at a fourth Meeting, between the Defendant, the Lord Baltimore, and some if not all of the Plaintiffs, (but believes all the Plaintiffs were present thereat) at which time the Lord Baltimore produced a Paper, which he said he had written or drawn up, to express the Parties Agreement; and which he also said, must be drawn at length, or to that or the like Effect, and such Paper was then read over twice or thrice (as the Deponent remembers.) And the Deponent on the behalf of Mr. Penns desired to have the same, or some Copy thereof, but the Lord Baltimore declared, that he had no Copy thereof, but gave it to Mr. John Sharpe his Solicitor, who was then present,

and directed him to give this Deponent a Copy of the same; Accordingly a few Days afterwards the Deponent received, from the said Mr. Sharpe, the Paper now produced, markt (Par. No 2.) as and for a true Copy thereof; and the said Mr. Sharpe and the Deponent then examined the same therewith, and Mr. Sharpe kept the Original, and delivered to this Deponent the said now produced Copy. And saith that he afterwards went to the said Mr. Sharpe's House, and attended on him several times, in Order to draw up in Form, and settle the Agreement, to be afterwards executed between the Parties, and particularly upon or about 16th August 1731, the Deponent delivered over to the said Mr. Sharpe, the Defendant's then, and present Solicitor, the Original Paper Draft of Articles of Agreement (but not including the Additional Clauses which are now thereto) now produced, markt (Par. No 3.) of which time, as well as of several other times spoken to in his Deposition to this Interrogatory, the Deponent is the better able to depose, after this length of Time, from some Notes which he kept thereof in order to draw out his Bill for his Time and Attendances. And the Deponent is the rather certain nearly as to the Time now last mentioned, from an original Letter to the Deponent (of the said Mr. Sharpe's Hand-writing which Deponent is well acquainted with, for that the Deponent hath often seen him write) now produced and markt Par. No 4. and dated 19th August 1731, wherein, he writ to this Deponent that he had perused the Draft of the Agreement between Lord Baltimore and Messrs Penns, and thought the same perfectly right, and that he had sent it that Night to Lord Baltimore for his perusal, or to such Effect, as by the said produced Letter to which the Deponent refers. Saith, that he, on several Days, after the said 19th of August, went, and sent to, the said Mr. Sharpe's House, in order to forward the settling the said Draft, until on or about the 23d of September 1731, when the said Mr. Sharpe informed this Deponent, that Councillor Wynne then had the said Draft laid before him, which said Councillor Wynne (now Mr. Serjeant Wynne) the Deponent had before seen, acting for the Defendant, relating to his Affairs in Maryland, and according to the Deponent's best Remembrance, the said Mr. Wynne had been present, on the Part of the Lord Baltimore, at one at least of the Meetings before spoken of: and after some farther Attendances on the said Mr. Sharpe he acquainted this Deponent on or about the 28th of October 1731, that he had got back the said Draft. But the Deponent did not obtain the same, so as to see what Alterations were made, or proposed to be made therein, until on or about 8th November 1731. And, upon the Deponent's obtaining the said Draft back again, this Deponent

found the same endorsed on the Outside, with a Direction or Desire to Mr. Wynne to peruse and settle that Draft, on behalf of my Lord Baltimore, and with a Note or Memorandum, that my Lord desired those Articles might be as short and general as possible, in regard the same must be made publick in both the Provinces, and signed Sharpe Solicitor pro Lord Baltimore, in such manner as now appears thereon. And which said Indorsement, Direction, Note and Signing, this Deponent assuredly believes was and is of the said Mr. Sharpe's own proper Hand-writing (which this Deponent was and is well acquainted with as aforesaid.) And the Deponent saith that the said Draft when it was so returned back, had in the Margin of the 9th Sheet or Folio thereof, these Words written, viz. (The Miles throughout to be expressed English Statute Miles) which said Words so written there, the Deponent assuredly believes were, and are, of the said Mr. Sharpe's Hand-writing; and also several other Notes and Words had been then added and written (by the said Mr. Sharpe, as the Deponent believes) upon several other of the Sheets; and the said Draft had likewise the several other Alteration and Additions then made thereto by writing, seeming to be writ with a Pencil, and which the Deponent did then and still doth apprehend and believes had been made by the said Councillor Wynne. Of which Alterations (more especially that for expressing the Miles to be English Statute Miles) this Deponent acquainted the Plaintiffs, or some of them, and had divers Meetings with them thereon, and they appeared to be greatly dissatisfied therewith, declaring that the Miles mentioned in the said Draft, ought to have been Geographical Miles or Minutes, and not English Statute Miles; and that an Alteration, so as to make them English Statute Miles, was entirely to their Prejudice, and in Lord Baltimore's Favour, and would extend his Bounds, in those Places where Miles had been mentioned, near about a sixth Part more than he himself had ever demanded or to some such Effect, and they shewed apparent Unwillingness to agree thereto; And saith that he afterwards attended the said Mr. Sharpe thereon and objected to that proposed Alteration, in particular, and on or about 5 January 1731, a Meeting was had, between the Defendant, and two, if not all three, of the Plaintiffs, at the Lord Baltimore's House in Grosvenor Square, when after much Debate, the now Plaintiffs, or so many of them as were there at time, were prevailed on to consent to such Expression of English Statute Miles; and the said Draft of Agreement, or great part thereof, was then read over, and many Debates thereon had, and the said Lord Baltimore did then propose that some Mathematician should be consulted, upon the Draft of the said Articles; and it having been

mentioned, in the said Draft that some Map or Plan of the Place in Question, was, or was to be, in some manner or other, annexed to or referred to, in the Articles of Agreement, Debates arose, between such of the Plaintiffs, as were then there (which the Deponent believes were all three of the Plaintiffs,) and the Defendant the Lord Baltimore, which of their two Maps or Plans should be engraved, so as to be referred to in the Articles of Agreement? and also who should be the Person that should engrave the same? And the Deponent well remembers, that some one of the Plaintiffs proposed that their Map or Plan should be engraved for that Purpose, and that a Person (whose Name this Deponent doth not now recollect, and who lived somewhere in the Strand) should engrave the same, but the Lord Baltimore insisted that his own Map or Plan should be engraved, for such purpose, and he named and desired that another different Person, one Mr. Senex of Fleet street (who is now lately deceased, as the Deponent believes) should engrave his the said Lord Baltimore's Map or Plan, and also, should examine the said Draft of the Articles; and accordingly, it was, in the Deponent's presence and hearing, agreed between the Lord Baltimore and such of the Plaintiffs as were there, that the Lord Baltimore's Map or Plan should be the Map or Plan, that should be engraved, and that the said Mr. Senex (who had been named by the said Lord Baltimore) should engrave the same; and that Mr. Senex should also consider, and give his Opinion upon, the said Draught of the said Articles of Agreement or to that Effect; and, accordingly, the Deponent was present, with the said Mr Sharpe the Lord Baltimore's Solicitor, when the said Draught of the said Articles of Agreement, was delivered to the said Mr. Senex. And the said Mr. Sharpe delivered to the said Mr. Senex the Map or Plan which this Deponent did then, and doth still believe, was the very Plan which had been markt by the Lord Baltimore as aforesaid, and the said Mr. Sharpe and this Deponent concurred in desiring the said Mr. Senex to consider the said Articles, and to give his Opinion for the Satisfaction of their respective Clients, upon the same, and upon the Propriety of the Terms and Expressions which were made use of therein, and also that the said Mr. Senex would engrave the Map or Plan so delivered to him by the said Mr. Sharpe. And the Deponent saith that, after some few Days time, the said Mr. Senex did verbally declare his Approbation of the Terms made use of in the Draft of the said Agreement, but the Deponent and the said Mr. Sharpe, or one of them, seemed rather desirous that he should give his Opinion thereon in Writing, or to some such effect, and which he afterwards did to the said Mr. Sharpe, and to this Deponent;

and that Copy of his Opinion which he delivered to this Deponent, this Deponent hath kept in his own Custody ever since, (until lately, that it was left with the Clerk, who examines this Deponent, as an Exhibit in the Cause) And it is the Paper markt Par. (No 5) now produced. And this Deponent did and doth apprehend, such Paper to have been of the said Mr. Senex's Hand-writing, but doth not know the same to be so. And that the said Mr. Senex declared he would go about engraving a Plate of the Map or Plan which had been so left with him by the said Mr. Sharpe; and after some time, the said Mr. Senex produced a Copper-plate, and also a Proof-sheet, as printed off from the same, the Lines of which the Deponent did examine as carefully as his Capacity would allow him, with the said written Map or Plan then in the said Mr. Senex his Custody, and found the same to agree together; And after such time the Deponent knows that Mr. Sharpe had in his own Custody again the said written Map or Plan, which had been so left with the said Mr. Senex, for engraving such Plan; And Mr. Senex did, at the Deponent's Request, some considerable time afterwards, stamp off some of the Prints from the Copper-plate, on the Margin of the Parchment, whereon the Articles of the Agreement were to be (and afterwards were) engrost for Execution Saith that, at the time the said Draft of the Articles was first delivered over, although the now Plaintiffs and their Nephew William Penn junior, had very near agreed upon Terms to purchase a Release from him to them, yet, such Release from him, was not actually obtained from him, in Form (to the Knowledge or Belief of this Deponent.) And therefore in August 1731, when the said Draft of the before mentioned Articles was so delivered over to the said Mr. Sharpe, the said William Penn junior was named therein as and for a Party to the said Articles, but after that time, and while the forementioned Matters were passing, the said William Penn junior did (to this Deponent's certain Knowledge) release to his Uncles, the now Plaintiffs, or to some of them generally the said Province of Pensilvania and Counties of Newcastle, Kent and Sussex, on which Account as that Matter had intervened while the said Draft of the Articles of Agreement was under Consideration as aforesaid, some of the now Plaintiffs, or the Deponent on their behalf desired, that then the said William Penn's Name might be struck out, and he not longer continued as a Party to such Articles of Agreement, which was agreed to on the part of the Lord Baltimore, and his Council, but the Lord Baltimore, or his Council, Mr. Wynne, afterwards insisted that the said William Penn junior, and also some other Persons Devises of certain Quantities of 10,000 Acres of Land,

under Proprietary William Penn's Will, should by an Instrument, to be endorsed on the Back of the said Articles of Agreement, declare their Consent to such Agreement between Lord Baltimore and the now Plaintiffs, and accordingly a Draft of a Deed-Poll (for an Endorsement) to some such effect, was prepared by the Deponent, and was settled by the said Counsellor Wynne, to some such effect, and makes one of the Papers now annexed or pinned to the said produced Draught of the Articles of Agreement. Saith that, upon or about 29th March 1732 (above seven Months after the said Draught had been delivered over as aforesaid) the Defendant did deliver to this Deponent a Memorandum, or Note in Writing, now produced and markt (Par. No 6) which the Deponent believes to be of the said Lord Baltimore's own Hand, containing a new Demand, that there should be a Clause to prohibit any of the People of the respective Provinces, to carry on Commerce into the Bays of Chesapeak and Delaware, by the means of any of the Rivers leading from one of the Provinces to the other, without the Leave of the Proprietor of the Province to whom the said Bay did belong. Upon the Delivery whereof to the Deponent by the said Lord Baltimore, his Lordship did signify to this Deponent, that his People in Maryland insisted on some such Clause, and that, therefore, he must have it, or to some such like effect. And this Deponent acquainted the Plaintiffs, or some of them, of such new Demand, and shewed to them the said last mentioned Memorandum or Note, and after some Consideration they agreed to have some Clause for such Purpose, and, accordingly a Draft of a Clause was drawn, which was afterwards settled by the said Counsellor Wynne, and makes one other of the Papers now annexed or pinned to the said produced Draft of the Articles of Agreement, and, at length, after many other Attendances, on the Lord Baltimore, Counsellor Wynne, and the said Mr. Sharpe, this Deponent and the said Mr. Sharpe compared the said now produced Draft of the Articles of Agreement, with Mr. Sharpe's Copy of the same Draft, on or about the 26th of April 1732, and this Deponent was to get and did get the said Map stamped or printed by the said Mr. Senex, on the Margin of some large Skins of Parchment, and the said Draft engrost, for six several Parts of the said Articles of Agreement, three to be kept by the said Lord Baltimore, and three to be kept by the Plaintiffs which being done, this Deponent was personally present on or about the 10th of May 1732, and did then see the Defendant and Plaintiffs respectively sign, seal, and as their several Acts and Deeds, deliver the Parchment Articles of Agreement, of that Date, now produced and markt Par. (No 7) and the Title Baltimore, and the Names John Penn, Thomas Penn and Richard Penn, thereunto

severally set and subscribed, were and are of the proper Hand-writing of the Defendant, the Lord Baltimore, and of the Plaintiffs, severally and respectively; and thereupon the said Mr. Sharpe, and this Deponent, and several other Witnesses then present, did sign an Endorsement or Attestation, as Witnesses, on the Back of the said Articles, of the Execution of the same, in such manner as now appears thereon; and the Name Ferdinando John Paris, in such manner as now appears subscribed to such Endorsement or Attestation, was and is of this Deponent's own proper Hand-writing; and at the same time this Deponent did also see the said William Penn the Grandson, and Letitia Aubrey, Charles Fell, and Gulielma Maria Fell (all of whom the Deponent then very well knew) respectively sign, seal and deliver as their several and respective Acts and Deeds, the Deed-Poll or Endorsement, written on the Back of the said engrossed Articles, which Deed-Poll or Endorsement also bears Date the same 10th of May 1732, and the several and respective Names, William Penn, Letitia Aubrey, Charles Fell and Gulielma Maria Fell, thereunto severally set and subscribed, were and are of the proper Hand-writings of them severally and respectively; And thereupon, the said Mr. Sharpe and this Deponent, and the like several other Witnesses (then present) who had witnessed the Execution of the said Articles of Agreement, did also subscribe their Names as Witnesses to the Execution of the said Deed-Poll or Indorsement, in such manner as now appears at the foot of the same, and the Name Ferdinando John Paris thereunto also set and subscribed, was and is of the Deponent's own proper Hand-writing; and saith, that the said Articles being so executed, the Parties Plaintiffs and Defendant in this Cause, congratulated each other on the concluding such Agreement, and appeared to be, and exprest themselves extremely pleased at the settling the Disputes which had for so many Years before subsisted between the two Families, and dined together that day.

The same [Int. 17. fol. 260.]

Saith that, so far as he knows or believes, the first Meetings in order to the said Agreement, began entirely upon the Motion and Desire of the Defendant the Lord Baltimore, and not upon the Motion or Request of the Plaintiffs, but the Deponent perceived the Plaintiffs to be very willing to meet his Lordship, in order to treat for an Agreement between them; and the Deponent well knows that the Terms proposed for their Agreement, at such Meetings as before mentioned, were generally proposed by, and were afterwards insisted upon by the Lord Baltimore himself, and several of which were complied with,

and agreed to, by the Plaintiffs with great Reluctancy and Unwillingness on their Part, so far as ever this Deponent could judge, and as this Deponent verily believes; And this Deponent saw and heard the Defendant from time to time insist upon his general Demands, as before-mentioned, and express himself to the Purport that, if the Plaintiffs would not agree thereto, he must renew his Claim against them, as to the three lower Counties, or to the like, or some such Effect. Doth not remember any forcible or menacing Methods, made use of by any of the Parties, in order to procure any particular Terms, save that at one of the early Meetings in order to the said Agreement one of the Plaintiffs express a great deal of Regret and Concern at the very great Expence, which, he said, they had been put to, on the former Disputes and Contests; which Matter the Deponent did, and doth apprehend and believe the Defendant took some advantage of: for that afterwards the Deponent observed the Defendant seemed the more tenaciously to insist upon his Demands; and several times when the Plaintiffs appeared unwilling to agree to his Terms, he intimated that then he must renew his former Claims, or to some such Effect; which the Deponent then lookt upon as menacing a further Expence to the Plaintiffs, which one of them had express some Fear or Dread of; saith that the said Agreement was not hastily or suddenly, or by any Surprise whatever (to the Knowledge or Belief of this Deponent) concluded and settled, but, on the contrary, the said Agreement and the Terms of it, were, to the Deponent's Knowledge, under Deliberation, from on or about 3d June 1731, until very near the time of executing the said Articles, on or about 10th May 1732, which was about eleven Months; and saith that great Part of the said Time was taken up in apparent Delays and Procrastinations (as the Deponent then believed, and still believes the same to be) used on the Part of the Lord Baltimore and his Agents, which the Deponent then wondered at, and could not then discover what should be the meaning of, as his Lordship seemed very fond and desirous of the said Agreement; but the Meaning of which were afterwards explained (to the Deponent's Apprehension) by what the Lord Baltimore himself, at several times towards the latter Part of the said Time, declared in this Deponent's Hearing, when he delivered over the said new Demand, on, or about 29th March 1732, And again, when he executed the said Articles, on, or about 10th May 1732, from whence this Deponent did then collect and believe, and doth still really believe, that such Delays were taken, in order that the Lord Baltimore might have time to receive the Sense and Opinion of his Officers or Agents in Maryland upon such Agreement, before he would compleat or

execute the same. And saith, that he doth not remember any other Instance, of an Agreement between two private Parties, having proceeded with such great Caution and Ceremony, or such long Deliberations, as were used in order to the completing the said Articles of Agreement between the Parties to this Cause, nor doth this Deponent know or believe that any Imposition or Deceit was used or endeavoured to be used by the Plaintiffs, or any of them, towards the Defendant, in order to the obtaining the said Articles of Agreement.

Abraham Taylor, aged 37. [Lib. C. fol. 477. Int. 113. tol. 478.]

Says he was a subscribing Witness to, and proves the Execution of the Articles of Agreement of 10th May 1732, by all the Parties thereto, and was also a subscribing Witness, and proves the Execution by the Plaintiffs of their Commission to their Commissioners dated 12th May 1732.

The same. [Int. 114. fol. 481.]

Says, that he being called in order to be a Witness to the Articles, did go to the Place where it was executed, that the Plaintiffs and the rest of the Company met, before my Lord Baltimore came, and in some time afterwards he came; and excusing himself for so long Stay, desired they might proceed to the Business they had met about. That the said Deed was then read over, and had several Blanks in it, which were all filled up till the Reader came to a Blank, which had been left for the Penalty. That thereupon it was asked by Mr. Paris, as the Deponent remembers, what Sum should be inserted? To which after some time, Lord Baltimore said 'twas a Matter of Indifference to him whether it was 5000*l.* or 50,000*l.* Upon which the Parties agreed to have it 5000*l.* and it was accordingly so filled up. Farther says, that, after the Execution of the said Deed, the Lord Baltimore in Conversation then said, That there had been long Disputes between the said Parties, and he was very glad there was now an End of them; that he had received Letters from his Friends in Maryland, advising him that he might have had better Terms [why then, surely, they knew there, what these Terms were] but that he was perfectly satisfied with them. And then named one Mr. Lloyd, in Maryland, and, at the same time, James Logan of Pensilvania, and said, that, if they had had the Management of it he believed they would have protracted the Affair much longer; but he thought it much better to end it, as they had now done, and hoped to see Mr. Penn in America to make an end of the Affair, or to that Effect. And both Parties declared they were well satisfied with, and would execute the said Agreement. And further says, That he then collected from the said Lord Baltimore's discourse at that

time, that he the said Lord Baltimore had transmitted the Substance of the Agreement between him and the Plaintiffs to some of his Friends in Maryland, and had the Letters aforesaid in Answer thereto, but, notwithstanding those Letters, he was perfectly well satisfied with the said Agreement.

Serjeant William Wynne, aged 49. [Lib. A. fol. 164. Int. 29. fol. 166.]

Saith that he hath lookt upon the Paper Draft of Articles of Agreement, now produced and markt Par. (No 3.) and that the said produced Draft was left at the Deponent's late Chambers in the Middle-Temple, London, by Mr. Sharpe, or one of his Clerks, (as this Deponent believes) on the Behalf, and by the Order (as he believes) of the Defendant the Lord Baltimore for the Deponent's Perusal, which said Mr. Sharpe is, or was (as the Deponent believes) Agent or Solicitor for the said Defendant. And saith, that he does not remember, that he the Deponent was ever attended or consulted with, about the said produced Draft, either by the Plaintiffs in Person, or any of them, or by the said Defendant in Person, or by any Solicitors or Agents for the said Parties, or any, or either of them, and is inclined to believe that he was not; cannot remember how long the said produced Draft lay before this Deponent, but believes it might lie before him about 10 Days, or a Fortnight, and believes he did strike out several Parts of the said produced Draft, and make other Alterations therein with a Lead Pencil; some of which the Deponent observes have been since wrote over with ink; and after he had made such Alterations therein, he did approve of the said produced Draft on the Behalf of the Defendant, so far as the Deponent could, without speaking to the Defendant or his Solicitor, touching the same. And the Deponent saith, that he had never been applied to, or consulted by the Plaintiffs, or any of them, relating to any of their Affairs whatsoever before the said produced Draught was laid before this Deponent, as aforesaid, or since, but, this Deponent had several times before that time, been applied to, and consulted, by and on the Behalf of the said Defendant, in the Way of this Deponent's Profession, as a Council relating to the Defendant's Estate and Concerns in Maryland, and elsewhere; and in particular, the Deponent well remembers that he had been acquainted by the said Defendant of the long Disputes that had subsisted between the Defendant and his Ancestors as Proprietors of the Province of Maryland aforesaid, and the Plaintiffs and their Ancestors as Proprietors of the Province of Pensilvania relating to the Boundaries of their respective Provinces. And saith, that he was requested by the Defendant, in or about

May 1731, or 1732. (as near as this Deponent can recollect the time) to meet the Plaintiffs and their Agents, to try if they could come to any amicable Agreement, touching the said Boundaries; and the Deponent was accordingly present at several Meetings between the said Defendant and the said Mr. Sharpe, his Agent or Solicitor, and some of the Penns, whom the Deponent believes to be the Plaintiffs in this Cause, and Mr. Paris their Agent or Solicitor; and remembers that the said Parties did, at length, come to some Agreements, which was ordered to be reduced into Writing, but the Particulars thereof, the Deponent cannot, at this distance of time, recollect, any otherwise, than from the said produced Draft, which the Deponent believes was drawn, or prepared in consequence of such Meetings and Agreement, and soon afterwards laid before this Deponent to peruse and settle on the Behalf of the said Defendant as aforesaid; but who drew, or prepared the said produced Draught, he knows not.

Mary Senex, aged 52. [Lib. A. fol. 154. Int. 30. fol. 156.]

Well knew John Senex, late of Fleet-street, London. Mathematician, who was her late husband, and he died the latter End of December 1740, and knew him for about 18 or 20 Years before his Death, and was his Wife about 18 or 19 Years, of that time, and did frequently see him write, and is well acquainted with his Character or Manner of Hand-writing, and hath lookt upon the Paper-Writing contained in one Sheet now produced, and markt Par. (No 5.) and does verily believe that the two Pages of the Body of the said produced Paper-Writing, and the Name John Senex, set at the End thereof, is and are of the said John Senex's Hand-Writing.

This Exhibit is Mr. Senex's written Opinion upon the Articles.

Thomas Smith, aged 29 [Lib. A. fol. 158. Int. 30. fol. 159.]

Well knew John Senex, who is dead, and died latter End of December 1740, and knew him between 13 and 14 Years before his Death, and first knew him by being put Apprentice to him, and served him as such seven Years, and lived afterwards with him as his Journeyman, to the time of his Death, saith, he often saw the said John Senex write, and is well acquainted with his Character or Manner of Hand-writing, and hath lookt upon the Paper-writing contained in one Sheet, now produced and markt Par. (No 5.) and really believes the two Pages of the Body of the said produced Paper-Writing, and the Name John Senex set at the End thereof is and are of the said John Senex's own Hand-writing: He has also lookt upon the printed Map or Plan, upon Paper, now produced and markt Sen. (No. 1.) and remembers the engraving the Plate for the said pro-

duced Map or Plan, and it was graved by one Thomas Hutchinson, who was at that time Servant or Journeyman (but had been Apprentice) to the said John Senex, and who left the said John Senex's Service and Family 8 or 10 Years ago, or upwards; and saith, the said produced written Paper, and the said produced Map or Plan, have relation to each other, and both relate to one and the same Subject, (as he really believes) for the Deponent hath compared them together, and finds they relate to the same Lands, and that the dotted lines contained in the said produced printed Map or Plan, agree or correspond with the Boundaries described in the said produced written Paper. And the Deponent saith, that he hath likewise lookt upon the Parchment Deed now produced, markt Par. (No 7.) and upon the Map or Plan, stampt or printed on the Margin of that Deed, and has compared the said produced Paper printed Map or Plan, with the said printed Map or Plan upon the said produced Deed, and he does not find any Variation or Difference between them, but is well satisfied and assured they were both stampt or printed from one and the same Plate.

Thomas Hutchinson, aged 35. [Lib. A. fol. 147. Int. 30. fol. 148.]

Did well know Mr. John Senex, and the said John Senex is dead, and died about a Year and a half since, as this Deponent believes, and knew him for many Years; for the Deponent, about the Year 1720, was put Apprentice to the said John Senex, and lived with him as such for the Space of seven Years, and afterwards lived with him and workt for him as a Journeyman, for about three Years more, and during the Time this Deponent so lived with the said John Senex as aforesaid, this Deponent did frequently see him write, and thereby became well acquainted with his Character and Manner of Hand-writing; and saith, he hath lookt upon the Paper-Writing contained in one Sheet, now produced and markt Par. (No. 5.) and does verily believe, that the two Pages of the Body of the said produced Paper Writing, and the Name John Senex set at the End thereof, is and are of the said John Senex's own Hand-writing; and saith, he hath also lookt upon the printed Map or Plan upon Paper now produced and markt Sen. (No 1.) and well remembers the engraving of the Plate for the said produced Map or Plan, for the same was graved by this Deponent, during the time he lived with the said Mr. Senex as aforesaid, but whether before or after the Expiration of his Apprenticeship, he does not at this Distance of Time remember; and saith, the said produced written Paper, and the said produced Map or Plan, have relation to each other, and both relate to one and the same Subject, as he most assuredly believes; for that the said produced written Paper seems

to the Deponent to contain Directions for drawing the said Map or Plan, and by comparing the same together, this Deponent finds they correspond with each other: And saith, that he hath likewise looked upon the Parchment Deed now produced, markt Par. (No 7.) and upon the Map or Plan stamped or printed on the Margin of that Deed, and has compared the aforesaid Paper printed Map or Plan with the said printed Map or Plan upon the said produced Deed, and most assuredly believes they were both stampt or printed off from one and the same Plate, for they are exact Copies of each other, and he does not find the least Variation or Difference between the one and the other.

Ferd. John Paris. [Lib. A. fol. 195. Int. 22. fol. 288.]

That upon or about the said 10th May 1732, when the said engrost Articles of Agreement were executed, the Deponent had before prepared, and did then produce to the said Lord Baltimore, and to his said Solicitor, the Copy or Draft of a Commission to be executed by the now Plaintiffs, for authorising seven Persons or some lesser Number to be therein named to carry the said Agreement into Execution in America, and which Draft of a Commission this Deponent verily believes was and is the Paper markt Par. (No 8.) now produced, and the said Lord Baltimore, and his Solicitor so well approved of the same, that they, or one of them, desired that this Deponent would get engrost like Commissions from the Lord Baltimore to be granted to a like Number of Commissioners on his Part, for the like purpose: and to enable this Deponent so to do, the said Mr. Sharpe on the Backside of the said Draft wrote down the Names of seven Persons or Commissioners for Maryland and accordingly this Deponent had both Setts of Commissions engrost by this Deponent's Clerk (with the before-mentioned Map or Plan stamp on the Margin of each of them: also) one Sett of Commissions for the Plaintiffs to execute, to authorize their Commissioners and another Sett for the Defendant to execute to authorize his Commissioners to carry the said Articles into Execution in America, and doth verily believe there was no difference between the Commissions prepared for, and executed by the Plaintiffs for such a purpose as aforesaid, and those prepared for and executed by the Defendant for such purpose, save only in the Names, Titles, additions, and Descriptions of the Persons granting such Authority, and of the Persons to whom such Authority was granted, and in the Names of the respective Provinces and Counties.

20TH BRANCH. Of the several Proceedings of the Commissioners in America, Day by Day, in order to have carried the Agreement into Execution.

**James Steel [Lib. C. Fol. 559. Int. 67. Fol. 579.]*

Says that Governor Gordon and Messieurs Preston, Hamilton, Charles and the Affirmant, the Plaintiffs' Commissioners, and Governor Ogle and Messieurs Calvert, Loyd, Howard, Bennett and Ward, the Defendant's Commissioners, met, at New Town in Maryland, on 6th October 1732, which was the first Quorum of the said Commissioners, and adjourned to the next Morning.

**The same [Int 68. Fol. 580.]*

Says that the same Commissioners met, at Newtown, on 7th October 1732, when the Articles of Agreement between the Plaintiffs and Defendant, and their several Commissions to the Commissioners were first read. Whereupon the said Ogle objected, that he did not think the Pensilvania Commissioners had sufficient Power to proceed in the Execution of the said Articles, because some Branches of the Plaintiffs Family had not signed the Commission of the Plaintiffs Commissioners, To which it was replied, by some of the Plaintiffs Commissioners, that that was supplied, by an Indorsement, made on the Commissions or Articles, in the Hands of the Defendant's Commissioners, (but as well as the Affirmant remembers, it was in the Articles) whereby, some Persons, Branches of the said Family, had covenanted not to obstruct the Execution of the said Articles, or to that Effect: upon which, the said Samuel Ogle said, he waved it for the present: That the Commissioners on the Part of Pensilvania, then did desire and insist upon it, that Clerks might be appointed, to take Minutes of the Proceedings of all the said Commissioners, that what they had done might appear: To which it was answered, by the said Samuel Ogle, on the Behalf of the Defendant's Commissioners, that there was no Necessity for the same. That when the Plaintiffs Commissioners found they could not procure the Consent of the Defendant's Commissioners to admit Clerks for the Purpose aforesaid, the said Plaintiffs Commissioners then proposed to the Defendant's Commissioners, to appoint some of the Commissioners to take Minutes of their said Proceedings; whereupon, it was agreed that Robert Charles and Michael Howard aforesaid, should draw up two Minutes thereof, to be exchanged by the Commissioners on each Side: and then, the said Commissioners departed from the House where they sat, and went to the House of Mr. James Harris in Newtown aforesaid; That,

when the said Commissioners met, at the House of the said Harris, the Plaintiffs Commissioners brought David French one of the present Commissioners [for Examination of the Witnesses] into the Room, to be a Witness to the exchanging the said Minutes. That, soon after the said Commissioners came into the Room, the said Samuel Ogle, observing that the said David French was in the Room, asked whether he was a Commissioner? To which it was said he was not, but was a Gentleman the Plaintiffs Commissioners had brought with them, and then the said Samuel Ogle intimated, that if he was not a Commissioner, he had no Business there: whereupon the said David French withdrew. And further saith that, to the best of his Memory, Mr. James Hamilton was also present with the said David French: and the same Objection was made to him, at the same Time, which occasioned his withdrawing in like manner. That, afterwards the said Robert Charles and Michael Howard, did each produce a Minute, which were Copies of each other, taken in pursuance of the said Appointment; and thereupon, the Plaintiffs Commissioners did require and insist, that one or more of the Commissioners on each Side, should sign the same Minutes, and exchange them. That the Defendant's Commissioners did then refuse to sign the same; and the said Michael Howard, on refusing to sign the same, said he would not do it, for that he did not know, if he did, but he might be called over to England to answer for it. And further saith that he hath looked on the Paper Writing now shewn to him, marked No. A. 1. and believes the same is one of the Minutes aforesaid, which the Defendant's Commissioners refused to sign, as aforesaid. That he knows not of whose Hand Writing the same Paper is, but was informed it was wrote by a young Man belonging to the said Michael Howard: That afterwards upon an Adjournment being proposed the Plaintiffs Commissioners desired, that it might be to a short Day, in regard the Year was far spent, and the proper Time for the Business, the Commissioners had to do, would soon be over; To which the Defendants' Commissioners answered, that by Reason of the publick Affairs of the Province of Maryland, they could not attend before the 30th Day of the same Month of October; whereupon the Commissioners, on both Sides, agreed to adjourn, to that Day, at Newcastle Town on Delaware, as the most proper Place to begin the said Business.

Samuel Preston [*Lib. B. Fol. 312. Int. 67. Fol. 347.*]

Gives the very same Account, as is just now given by Mr. Steel.

Samuel Preston [*Lib. B. Fol. 312. Int. 68. Fol. 355.*]

Adds materially That at the said Meeting on 7th October it

was agreed by the Commissioners on both Sides, that the first thing necessary to be done was, to meet at Newcastle to mark out the Circle mentioned in the Agreement. That the Plaintiffs Commissioners were ready on 7th October, and desirous, to proceed to Newcastle, to run the said Circle; but believes the Defendant's Commissioners were not then prepared for the same; not apprehending it was design'd to proceed immediately to running any Lines; but then, shewed no Unwillingness to run the said Circle, and therefore all the Commissioners agreed to adjourn and meet at Newcastle aforesaid, on the 30th October, for the Purpose aforesaid. Says he has looked on the Paper A. No 1. which he takes to be the Minute drawn by Howard and Charles, mentioned in his Answer to 67 Int. Does not know of whose Writing it is, but believes it was writ by a young Man of Michael Howard's.

Note well.

The Articles of Agreement between the Parties themselves, stipulated expressly that those very Parties should give the Commissions to their Commissioners, and that Clause was translated verbatim into the Body of the Commission itself; yet, Mr. Ogle fancied ours was not a good Commission unless some other Persons had joined in our Commission; more than his own Master had stipulated for.

Benjamin Tasker the Defendant's Witness, cross examined [Lib. E. Fol. 49. Int. 22. Fol. 56, 23. Fol. 56, and 20. Fol. 63.]

Says there were Articles of Agreement between the Plaintiffs and Defendant, of — May 1732. and that Commissions did issue from the Plaintiffs and Defendant, and Commissioners were thereby appointed for marking and laying out the Limits and Bounds, and that he was present at divers of the Meetings between the Commissioners, in the Capacity of one of the Defendant's Commissioners; and to his best Remembrance there was no Proposal made, at any the Meetings he was present at, for appointing Clerks to take Minutes of the Commissioners Proceedings. But has heard, that at the first Meeting of the said Commissioners, which he was not at, such a Proposal was made for appointing such Clerks, but by whom it was made knows not, but believes it was not agreed to. And has heard it was then also proposed, (but by whom knows not) that a Commissioner on each Side should be appointed to take such Minutes, which was also not agreed to.

Samuel Preston [Lib. B. Fol. 312. Int. 69. Fol. 358.]

Says that Messieurs Ogle, Loyd, Howard, Bennett and Tasker, Commissioners for the Defendant, and all the seven Plaintiffs Commissioners met at Newcastle, on 30th October 1732, to pro-

ceed according to their former Agreement, to run the Circle about Newcastle, mentioned in the Agreement; but the Commissioners did not proceed therein, being stopt by the Defendant's Commissioners requiring to see the Grant of Pensilvania, and the Deeds of Feoffment, in the Articles mentioned, to see whether the said Circle, in them mentioned, agreed with the Circle mentioned in the Articles? The Plaintiffs Commissioners informed them they had met to execute the Articles of Agreement, and not to examine the Rights of the Plaintiffs and Defendant. Yet, as it was in their Power, they would comply with their Desire; and, accordingly, one of the Plaintiffs Commissioners went to Philadelphia for them, and the Commissioners adjourned to next Day,

James Logan [*Lib. B. Fol. 76. Int. 69. Fol. 171.*]

Says much the same, and that the Commissioners were stopt from proceeding, by Governor Ogle's insisting that that Grant and those Deeds should be produced, which, says he, tho' manifestly needless, in mere Condescension to him was complied with.

**Jame Steel* [*Lib. B. Fol. 559. Int. 69. Fol. 588.*]

Says nearly the same Thing.

Andrew Hamilton.

Proves this also, but he does it by enumerating this and many other Passages, as Evidences, that the Defendant's Commissioners did never intend to proceed.

Note well,

It will come out presently that Lord Baltimore was then hourly expected to arrive in Maryland: This Charter, and these Deeds of Feoffment, might, very probably, have been in England: if so, this Artifice of Governor Ogle's had stopt the Affair a fine Time, but unfortunately, for him, they happen'd to be but 36 Miles off, at Philadelphia, and so might be, and were sent for, and that Attempt to spin out the Time defeated.

Benjamin Tasker the Defendant's Witness and Commissioner, being cross examined, [*Lib. E. Fol. 49. Int. 15. Fol. 65.*]

Says there was a Meeting of the Commissioners on 30th October on both Sides, at Newcastle, and that they adjourned, but does not remember at whose Instance that Adjournment was proposed.

Samuel Preston [*Lib. B. Fol. 312. Int. 70. Fol. 360.*]

That the said Commissioners met at Newcastle 31st October in the Morning, and the Plaintiffs Commissioners produced the Grant of Pensilvania, and an Exemplification of the Deeds of

Feoffment, and upon comparing the said Articles with the said Grant and Deeds, it appeared the Description of the Circle in the said Grant and Deeds was truly recited in the Articles. Notwithstanding which, the Defendant's Commissioners insisted upon having Copies of the said descriptive Parts. And, altho' the Plaintiff's Commissioners thought that Demand unreasonable—Yet—to remove all Objections, they gave the Defendant's Commissioners those Copies. Then the Plaintiff's Commissioners proposed to begin to mark out the said Circle. To which the Defendant's Commissioners replied, They must take some time to consider thereof, and the Commissioners adjourned to the Afternoon.

James Logan [*Lib. B. Fol. 76. Int. 70. Fol. 173.*]

Confirms the same with this Addition, that the Defendant's Commissioners desired to have the Copies of the descriptive Parts signed by the Plaintiffs Commissioners, which was done.

**James Steel* [*Lib. C. Fol. 559. Int. 70. Fol. 590.*]

Was the Commissioner who went to fetch the Grant and Feoffments, and says the Exemplification of the Feoffments were under the Great Seal of New York. He also says that the Defendant's Commissioners demanded Copies of the descriptive Parts to be signed by the Plaintiffs Commissioners, and that it was objected to as entirely unnecessary, seeing the Defendant's Commissioners themselves had compared, and found the same exactly agreeable to the Articles; but that the Plaintiffs Commissioners gave them the required Copies signed.

Andrew Hamilton.

In his general Account says they at first demanded Copies of the whole deeds, which were very long.

Samuel Preston [*Lib. B. Fol. 312. Int. 71. Fol. 364.*]

That the Commissioners met again, at Newcastle, on said 31st October in the Afternoon. And the Plaintiffs Commissioners then proposing that the Commissioners should proceed to the marking and running out the Circle, as directed by the Agreement, the Defendant's Commissioners thereupon started a Difficulty about running the Circle, alledging that as the Articles had directed a Circle to be run, but had not fixed or ascertained where the Center should be, they apprehended it was not in their Power to fix such Center. The Plaintiffs Commissioners replied that, as both the Plaintiffs and Defendant had agreed, and had vested a Power in the Commissioners to mark and run out the Circle, they had likewise granted them the Means and full Power to find and fix a Center for such Circle, and to do everything necessary to the effectual running and completing

such Circle. And, amongst their Debates, the Plaintiffs Commissioners said they apprehended that the said Articles of Agreement, and the Commissions thereupon, directed a Circle to be run at the Distance of 12 English Statute Miles from the said Town, without including the said Town. but they the Plaintiffs Commissioners were so desirous of, and intent upon, the carrying the said Articles into Execution, that, the Affirmant believes, they would have consented to fix a Center, almost in any Part of the Town, that would please the Defendant's Commissioners, to induce them to come into the running the said Circle. And, after some farther Debate, the Commissioners on each Side agreed to go out and walk about the Town, to see if they could find and agree upon a proper Place for such Centre; and accordingly, did walk about and view the Town with several of the principal inhabitants thereof, but not agreeing upon a Place for fixing such Center, they adjourned till next Morning.

James Logan [*Lib. B. Fol. 76. Int. 71. Fol. 175.*]

Gives much the like Account.

**James Steel* [*Lib. C. Fol. 559. Int. 71. Fol. 593.*]

Gives the like Account, only adds that the Defendant's Commissioners refused to proceed to run the Circle, for the Reasons above-mentioned. That the Plaintiffs Commissioners earnestly desired then to proceed, and told them it was then the Afternoon of the last Day which the Articles had limited for beginning the Work. That the Defendant's Commissioners answered that the same was begun. That the Plaintiffs Commissioners insisted that Surveyors should survey the Town, in order to find the Center of the Town. To which Mr. Ogle answered there was no Occasion thereof, and proposed that the Commissioners should walk about the Town, which they did.

Andrew Hamilton.

Confirms the same in another Place, very strongly, and says that it was proposed to fix the Court-house for the Center, which was not one third of the Breadth of the Town from the River Side, but all rejected.

Note well.

This new Instance of affected Chicanery. The Feoffment granted, first the Town, and then all the Lands within the Compass or Circle of 12 Miles about the Town: the Agreement was, that the Circle should be drawn at 12 Miles Distance from the Town. My Lord's own Mathematician, Mr. Senex, told him, in his written Opinion upon the Draft of that Agreement, that Newcastle was to be as a Center, and the Circle was to be drawn 12 Miles from the Town. Notwithstanding all this,

Mr. Ogle can't find a Center in the Town. To prevent a Dispute, we offer him a Center in the Town, and, by the way, take less than one Third of the Town to us, and give my Lord more than two Thirds of the Town itself, No! That won't do. Nay, what says Mr. Preston? Why that we were so desirous to proceed, that we would have agreed to fix a Center almost in any Part of the Town. But that would not do. For if they had agreed on a Center, then, they must have proceeded. But, it's plain, Ogle had resolved they never should proceed one single Step. There cannot possibly be any stronger Proof of it, than this. When we had agreed to put a Center in the Town, and desired that Surveyors might survey it, in order to find the Center of it, He answers; No! there is no Occasion.

Samuel Preston, [Lib. B. Fol. 312. Int. 72. Fol. 368.]

That the said Commissioners met again at Newcastle on 1st November 1732, in the Morning. And then Governor Ogle declared, he having advised both with Mathematicians and Lawyers, was not satisfied that the Commissioners had any Power to find or fix a Center for the Circle directed to be run by their Commissions and the said Agreement. And said further, that the Defendant himself, being expected to arrive in Maryland in a very short Time, he, therefore desired that they might adjourn, in order that he and the rest of the Defendant's Commissioners, might have an Opportunity, to consult his Lordship thereon; and declared He did not doubt but my Lord would give some Directions to remove the Difficulty about the Center, or to that Effect. To which the Plaintiffs Commissioners answered, They were much averse to such adjournment, but, since the Defendant's Commissioners seemed so pressing for it, they therefore desired to know what Time the Defendant's Commissioners proposed to adjourn to? And that they might have Time to consider of it: and then they adjourned to the Afternoon.

James Logan [Lib. B. Fol. 76. Int. 72. Fol. 177.]

Gives the same Account; only says that Ogle expected my Lord's Arrival every Day.

Note well.

The only two of the Defendant's original Commissioners who are examined, swear positively they never contrived, along with my Lord, to defeat the Articles before such Time as the Commissioners differed with each other. How should they? The Articles and Commission executed 10 and 12 May 1732, did not get to America till Middle of August. Then, or within a few Days after my Lord must have set out from hence on his Voyage, for he was expected, and actually arrived in Mary-

land on 14 November 1732. A very pretty way they have taken to deny the Charge in our Bill, that they did, generally, contrive together, to defeat the Articles. namely, that they did not so contrive, before such a particular Time.

Samuel Preston, [Lib. B. Fol. 312. Int. 73. Fol. 371.]

That the said Commissioners met in the Afternoon, and the Plaintiffs Commissioners then proposed and insisted that full Minutes might be taken of the Commissioners Proceedings; but the Defendant's Commissioners objected thereto, and insisted they were entirely needless. And says the Defendant's Commissioners then proposed to have a long Adjournment, but he does not remember the precise Time, but remembers it was for a longer Time than the Plaintiffs Commissioners then cared to comply to, and then they adjourned to next Morning.

James Logan, [Lib. B. Fol. 76. Int. 73. Fol. 180.]

Confirms the foregoing, and says, the Maryland Commissioners absolutely refused to have full Minutes, and proposed only short Minutes, to enter the Meetings and Adjournments. He remembers the Time proposed for Adjournment, and says Governor Ogle proposed to adjourn for three Months. That the Pensylvania Commissioners did not agree thereto, but desired Time to consider of it, and then the Commissioners adjourned to next Day.

Samuel Preston, [Lib. B. Fol. 312. Int. 74. fol. 373.]

That the said Commissioners met the second of November 1732, at Newcastle, and the Plaintiffs Commissioners then declared that altho' they had come there with a full Intent and Expectation to enter upon the Business of executing their Commission, pursuant to the Agreement, and were prepared with their Artists, and in full Readiness to go upon it, yet as the Defendant's Commissioners were so pressing to have an Adjournment, and they the Plaintiffs Commissioners had so great an Opinion of the Defendant's Honour, that they did not doubt but he would give proper Directions to his Commissioners to remove the Difficulty that obstructed their proceedings in the said Business; They, therefore would comply to gratify the Defendant's Commissioners in such Adjournment. And to the best of his Remembrance there was a Paper or Minute prepared by the Plaintiffs Commissioners of the Purport above said, and which was then publickly read at this Meeting by the Plaintiffs Commissioners, or some of them.

James Logan, [Lib. B. Fol. 76. Int. 74. Fol. 182.]

Confirms the foregoing Account.

Andrew Hamilton.

In his Account, given in another Form, confirms it also.

James Hamilton were present. 4th, Refused to let a Commissioner on each side sign a Minute. 5th, In the proper Time for running the Lines, and that Season was expiring, proposed and insisted on an Adjournment from 7 to 30 October. 6th, Stopt the Work, and insisted to see the Charter and Feoffments. 7th, Wanted Copies of those Deeds after he had himself examined them. 8th, Would have those Copies signed by our Commissioners. 9th, Would not proceed then, they must take Time to consider. 10th, He had no Power to find the Center. 11th, Refused to let the Town be survey'd, to find the Center of it, there was no Occasion he said. 12th, Refused our Offer to give him a Center in the Town, tho' we took less than one third, and gave him more than two thirds of the Benefit of the Town, and would have given him almost any Place. 13th, Proposes and insists on a three Months Adjournment, because my Lord was daily expected in Maryland. 14th, Again refused that full Minutes should be taken. 15th When his false Minutes were objected to and in effect own'd by himself to be false, never amended them.

All this during, indeed, only four Days' meetings, for the first Day, they did nothing at all, and the sixth Day, they only adjourned.

Samuel Preston, [Lib. B. Fol. 312. Int. 77. Fol. 382.]

Has heard and believes that Lord Baltimore arrived in Maryland in November 1732, and continued in America till June or July following.

James Logan, [Lib. B. Fol. 76. Int. 77. Fol. 191.]

He was informed and believes Lord Baltimore arrived in Maryland in a short Time after the said 2d of November 1732, and as he thinks before the End of that Month; and for a Reason of his belief, says that Governor Gordon about latter end of November, or beginning of December, received a Letter from the Defendant dated in Maryland, which Letter the Affirmant saw, and it appeared to be wrote by, or by Order of the Defendant, and to be sigend by him. And the Defendant as he was informed and believes, sailed from Maryland, on his Return from Maryland, some time in or about July following.

My Lord in his own Answer, Admits he arrived in New-England in September, and in Maryland 14 November 1732.

Samuel Preston, [Lib. B. Fol. 312. Int. 78. Fol. 382.]

Says that Samuel Ogle and Calvert, Howard, Ward, Tasker and Jennings (who appeared by Vertue of a new Commission) the Defendant's Commissioners, and Mr. Norris, this Affirmant, and Messrs Hamilton, Steel and Charles; as the Plaintiffs Commissioners, met, at Newcastle, on 1 February 1732, on which Day

no Business was done by the Commissioners, but they adjourned to next Day, at the Court-House in said Town.

**James Steel*, [*Lib. C. Fol. 559. Int. 78. Fol. 597.*]

Confirms the same.

Samuel Preston, [*Lib. B. Fol. 312. Int. 79. Fol. 383.*]

Says, that the said Commissioners met, at the Court-House at Newcastle, on 2d February; when the Plaintiffs Commissioners asked the Defendant's Commissioners, whether Lord Baltimore had given them any Directions concerning finding a Center for the Circle? They answered that he had not: for that he having entered into an Agreement, and delegated his Power to his Commissioners, he left the same entirely to them, and would not interfere. And the Affirmant believes the Defendant's Commissioners did then say, they had not sufficient Power to fix the said Center, as they had formerly said, and that it was waved. Thereupon the Defendant's Commissioners said, Let us see whether we can agree upon the Circle? And then insisted that, by the Circle in the Articles mentioned, was intended a Circle of 12 Miles Circumference only. To which the Plaintiffs Commissioners replied, that they had nothing to do but to follow the Directions of the said Articles and their Commissions: By which it appeared that the said Circle was to be drawn at 12 English Statute Miles distance from the Town of Newcastle, and which they understood, was a Circle of 12 Miles Radius. And the Plaintiffs Commissioners did insist that the Defendant's Commissioners should declare, whether they thought they had full Power to execute the said Agreement, or not? But does not remember what particular Answer they gave to it. But the Defendant's Commissioners did shew a Readiness to run out such a Circle as they had said was, intended by the said Articles, but did not think they had sufficient Power, by their Commission and the said Articles, to run the said Circle at 12 Miles Distance from the Town.

Andrew Hamilton,

In his Deposition speaks largely hereto.

Samuel Preston, [*Lib. B. Fol. 312. Int. 80. Fol. 387.*]

That the said Commissioners met, again, that Afternoon, and as well as he remembers it was proposed by the Defendant's Commissioners, seeing the Commissioners on each side could not agree concerning the Dimensions of the Circle, that they should consult Mathematicians thereon. Whereupon the Plaintiffs Commissioners, altho' they thought they had not Power to depart from the Words of the Articles, upon the Opinions of any Mathematicians whatsoever, yet, considering they could not procure joint Minutes of their Proceedings to be taken, in

James Hamilton were present. 4th, Refused to let a Commissioner on each side sign a Minute. 5th, In the proper Time for running the Lines, and that Season was expiring, proposed and insisted on an Adjournment from 7 to 30 October. 6th, Stopt the Work, and insisted to see the Charter and Feoffments. 7th, Wanted Copies of those Deeds after he had himself examined them. 8th, Would have those Copies signed by our Commissioners. 9th, Would not proceed then, they must take Time to consider. 10th, He had no Power to find the Center. 11th, Refused to let the Town be survey'd, to find the Center of it, there was no Occasion he said. 12th, Refused our Offer to give him a Center in the Town, tho' we took less than one third, and gave him more than two thirds of the Benefit of the Town, and would have given him almost any Place. 13th, Proposes and insists on a three Months Adjournment, because my Lord was daily expected in Maryland. 14th, Again refused that full Minutes should be taken. 15th When his false Minutes were objected to and in effect own'd by himself to be false, never amended them.

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**James Steel, [Lib. C. Fol. 559. Int. 78. Fol. 597.]*

Confirms the same.

Samuel Preston, [Lib. B. Fol. 312. Int. 79. Fol. 383.]

Says, that the said Commissioners met, at the Court-House at Newcastle, on 2d February; when the Plaintiffs Commissioners asked the Defendant's Commissioners, whether Lord Baltimore had given them any Directions concerning finding a Center for the Circle? They answered that he had not: for that he having entered into an Agreement, and delegated his Power to his Commissioners, he left the same entirely to them, and would not interfere. And the Affirmant believes the Defendant's Commissioners did then say, they had not sufficient Power to fix the said Center, as they had formerly said, and that it was waved. Thereupon the Defendant's Commissioners said, Let us see whether we can agree upon the Circle? And then insisted that, by the Circle in the Articles mentioned, was intended a Circle of 12 Miles Circumference only. To which the Plaintiffs Commissioners replied, that they had nothing to do but to follow the Directions of the said Articles and their Commissions: By which it appeared that the said Circle was to be drawn at 12 English Statute Miles distance from the Town of Newcastle, and which they understood, was a Circle of 12 Miles Radius. And the Plaintiffs Commissioners did insist that the Defendant's Commissioners should declare, whether they thought they had full Power to execute the said Agreement, or not? But does not remember what particular Answer they gave to it. But the Defendant's Commissioners did shew a Readiness to run out such a Circle as they had said was, intended by the said Articles, but did not think they had sufficient Power, by their Commission and the said Articles, to run the said Circle at 12 Miles Distance from the Town.

Andrew Hamilton,

In his Deposition speaks largely hereto.

Samuel Preston, [Lib. B. Fol. 312. Int. 80. Fol. 387.]

That the said Commissioners met, again, that Afternoon, and as well as he remembers it was proposed by the Defendant's Commissioners, seeing the Commissioners on each side could not agree concerning the Dimensions of the Circle, that they should consult Mathematicians thereon. Whereupon the Plaintiffs Commissioners, altho' they thought they had not Power to depart from the Words of the Articles, upon the Opinions of any Mathematicians whatsoever, yet, considering they could not procure joint Minutes of their Proceedings to be taken, in

order to get some Evidence concerning those Proceedings, they consented to consult Mathematicians, as the Defendant's Commissioners required. That then, the Plaintiffs Commissioners insisted that the Question, to be proposed to the Mathematicians, should be reduced to Writing: which after some Hesitation, was consented to, and a short Question was accordingly wrote by one of the Defendant's Commissioners. That then the Commissioners agreed to adjourn till next Morning, and some of the Commissioners then desired the Adjournment might be till eleven, and others desired it might be till ten o'clock, but the Affirmant cannot tell which of the Hours was agreed to. But says, the usual Hour of adjourning to before that time, had been generally, ten of the Clock: altho' upon an Adjournment to that Hour, the Day before, the Defendant's Commissioners had not attended till 11 o'Clock. And says, that the Plaintiffs Commissioners at those Meetings at Newcastle, had many times required of the Defendant's Commissioners to admit Clerks, to take Minutes of all their Proceedings, but the said Defendant's Commissioners always refused to consent thereto, and therefore, no Clerks were appointed to attend the said Commissioners, or to take down the said Minutes.

* *James Steel*, [*Lib. C. Fol. 559. Int. 80. Fol. 598.*]

Says positively that, at this Meeting the Defendant's Commissioners again alledged that, as the Articles did not sufficiently fix the Center, they had not sufficient Power, by their Commission to fix the said Center. Then he gives the like Account as Mr. Preston. And adds that at this Meeting, as well as at many others before, it was insisted upon and required, by the Plaintiffs Commissioners, that Clerks should be admitted, to take joint Minutes, of the whole Proceedings and Actings, which was always, hitherto, and at this Time also, denied and refused by the Defendant's Commissioners. They always alledging that the same was needless and unnecessary. He remembers nothing more that past at this Meeting, but that the Commissioners adjourn'd till next Morning, some of them saying till ten, others eleven o'Clock.

Andrew Hamilton.

Speaks largely to the foregoing.

Samuel Preston, [*Lib. B. Fol. 312. Int. 81. Fol. 392.*]

Saith that Isaac Norris, this Affirmant Preston and James Steel, Commissioners for the Plaintiffs, and also, a Quorum of the Defendant's Commissioners, met at the Court-House, about eleven o'Clock in the Forenoon of 3 February 1732, pursuant to their last Adjournment: but Messrs Hamilton and Charles,

two others of the Plaintiffs Commissioners then at Newcastle, were not then come into the Room. And Governor Ogle, immediately, proposing that, as there was then a Quorum of the Commissioners on each side present, they should proceed to Business: to which the Plaintiffs Commissioners then present answer'd, that there were some others of the Plaintiffs Commissioners that they expected would be there instantly, and just then, the said James Steel, happening to be called out of the Room, and Governor Ogle observing it, said to the Pensilvania Commissioners, Gentlemen, I observed just now you were a Quorum, but now here are not enough to go upon Business. Whereupon, the said Isaac Norris went out of the Room to send away the said James Steel (as the said Isaac Norris at his Return, told this Affirmant) to hasten the said Andrew Hamilton and Robert Charles: which the said Governor Ogle, likewise observing, said, to the Affirmant, Now, here is another of your Commissioners gone, and seemed to be much displeased at the Plaintiffs Commissioners for making him wait so long, and Governor Ogle, some short time after, looking upon his Watch, said, it was past twelve o'Clock, and that as there was not then a Quorum of the Plaintiffs Commissioners there to proceed upon the Business, he would stay no longer, and went away out of the Room, and the rest of the Maryland Commissioners soon after followed him: and saith that, when Governor Ogle looked at his Watch, and said it was past twelve o'Clock, as above mentioned, the Affirmant, at the same time, look'd upon his Watch, and very well remembers, that it then wanted near an Half an Hour of 12 o'Clock, and that he told the said Governor Ogle so: but the said Governor Ogle then told this Affirmant, that his Watch was too slow, tho' this Affirmant is satisfied his Watch was pretty right, he having, that Morning, set it by a good Clock. And saith, that, just as the said Governor Ogle went out of the Room, the said Isaac Norris (having staid out but a few Minutes) returned. And saith that those of the Plaintiffs Commissioners who were at Newcastle on the said 3d of February, and did not attend the Meeting of the Commissioners that Forenoon, did not, (as he is well assured) wilfully absent themselves, with intention not to meet; for that they were, all that Forenoon, and likewise some part of the Night before, employed, in preparing a Writing which they thought necessary to be read and delivered to the Maryland Commissioners at that Meeting. And saith, that immediately after the Maryland Commissioners had so left the Room, and the said Isaac Norris and the Affirmant were also going away from thence (to the best of the Affirmant's Remembrance) they met the said James Steel and some other of the said Pensilvania Commis-

sioners, who had been absent as aforesaid, coming up to the said Room, in order to attend the said Meeting of the Commissioners; which the Affirmant believes was not above a quarter of an Hour after the said James Steel, had so left the said Room, to fetch the said Pensilvania Commissioners as afore set forth. And further saith that, upon the said James Steel and Isaac Norris going out of the Room, and Governor Ogle's offering thereupon to break up the Meeting aforesaid, the Affirmant desired the said Governor Ogle not to be uneasy, for that he the Affirmant believed the said James Steel and Isaac Norris were only gone out to hasten the said other Pensilvania Commissioners, or to that Effect, and saith, that at the Meeting of the Commissioners on the day before this Meeting, the Pensilvania Commissioners had waited for the Maryland Commissioners as long after the Hour of Adjournment, as they had waited for them the said Pensilvania Commissioners at this Meeting. And verily believes, that the genuine true Reason why the said Maryland Commissioners did so depart and break up the said Meeting, was, that they were not desirous, nor did intend, to proceed upon putting into Execution, the Business they were directed to do by their Commissions, and the said Articles of Agreement; for that in the Afternoon of the said 3d of February, when this Affirmant and the said Isaac Norris went to the said Maryland Commissioners to desire them to meet again, Governor Ogle then complained that the said Pensilvania Commissioners had been negligent in Meeting, and said he apprehended it was done with Design; that, if the Case was his own, he would be very ready to oblige any Gentlemen, but as it was an Affair of the Lord Baltimore's and he conceived the Plaintiffs Commissioners had given him an Advantage, he should not look upon it to be just to his Constituent, if he did not make use of it, or to that Effect.

**James Steel, [Lib. C. Fol. 559. Int. 81. Fol. 601.]*

That a Quorum of the Commissioners for the Plaintiffs, viz. Isaac Norris, Samuel Preston, and this Affirmant and also a Quorum of the Commissioners for the Defendant met, at the Court-House, between 10 and 11 of the Clock in the Forenoon of the 3d of February 1732, but remembers that Andrew Hamilton and Robert Charles, two other of the Plaintiffs Commissioners, tho' then in the said Town, were not present when the rest of the said Commissioners first met as aforesaid, that Forenoon. And saith that the said Andrew Hamilton and Robert Charles, did not wilfully stay away, or absent themselves, from that Meeting, with Intention not to meet, they being, all that Morning, and the Forenoon, busy and employed in drawing up

and copying, a Paper, in answer to a Query the Defendant's Commissioners had given in to the Plaintiffs Commissioners at their Meeting the Day before, and for other Purposes therein comprised, which was thought necessary by the Plaintiffs Commissioners to be laid before the Defendant's Commissioners at that Meeting. That soon after the said Quorums of the Commissioners met as aforesaid, and before they sat down to Business, a Messenger came into the Room from the said Andrew Hamilton and Robert Charles to this Affirmant, desiring him to bring them the Articles of Agreement between the Plaintiffs and the Defendant of the 10th of May 1732, which was then, and had for some time, before, been, in this Affirmant's Custody, the same being then wanted by the said Andrew Hamilton and Robert Charles, to supply and fill up some Blanks in the said papers, which they were preparing as aforesaid. And thereupon the Affirmant (having first acquainted the rest of the said Commissioners then present with the said Message, and the Reason, of his going) went out of the Room where the said Commissioners were met. And the said Isaac Norris followed him to the Door, to desire him to hasten the said Andrew Hamilton and Robert Charles to the said Meeting: and then the said Isaac Norris immediately returned into the Room to the rest of the said Commissioners. And this Affirmant proceeded, with what speed he could, to the said Andrew Hamilton and Robert Charles, and after staying about an Hour with them, to fill up the Blanks and compleat the said Paper, this Affirmant returned, with the said Andrew Hamilton and Robert Charles, in order to attend and go upon Business with the rest of the said Commissioners at that Meeting: and being got up as far as the Green, near the said Court-House, they there met the said Isaac Norris and Samuel Preston, coming out of the said Court House who, telling them, the Maryland Commissioners were gone away from the Court-House, they were obliged to turn back, tho' it was then but between 11 and 12 o'clock. And the Affirmant saith, that the Reason alledged by the Defendant's Commissioners for their breaking up the said Meeting was, (as the Affirmant is informed) because there was not a sufficient Quorum of the Plaintiffs Commissioners to go upon Business, occasioned by this Affirmant's going out of the Room upon the said Message, to the said Andrew Hamilton and Robert Charles as aforesaid. That the Affirmant very well remembers that the Plaintiff's Commissioners had, the day before, waited on the Defendant's Commissioners after the Hour of Adjournment, full as long a Time, as this Affirmant was absent from the said Meeting in the Forenoon of the said 3d of February, on the said Message to the said Hamilton and Charles as before set forth. And saith that,

as he this Affirmant conceives and believes, the true and genuine Reason why the said Maryland Commissioners had so broke up and departed from the said Meeting as aforesaid was, because they imagined, that thro' this Affirmants Absence on the said Message, and there not being a Quorum of the Plaintiffs Commissioners left, they had got such an Advantage, as they could thereby avoid proceeding any farther in the Execution of their Commission and the said Articles. And further saith that, after the said Defendant's Commissioners so breaking up the said Meeting, he this Affirmant was told, by the said Isaac Norris and Samuel Preston, that they had continued with the said Maryland Commissioners during the Affirmant's Absence on the Message, aforesaid, and had entreated and very much pressed the said Maryland Commissioners to stay, and not depart from the said Meeting, for that he the said Affirmant, and the rest of the Plaintiffs said Commissioners would soon be there, or to that Effect.

Andrew Hamilton,

In his Account, speaks largely to some of the foregoing Matters.

Samuel Preston, [Lib. B. Fol. 312. Int. 119. Fol. 448.]

That in his Opinion the Spring and Fall are the properest Seasons for running out Lines in the Woods, when such Running is to be continued for Weeks or Months at a Time. Has not been conversant with surveying in the Woods, and therefore can't say how long Time it would require to run and mark out the Circle and Lines mentioned in the Articles; but verily believes there was sufficient Time to do the same, between the first Meeting of the Commissioners, and the 25 of December 1733. That, when the Commissioners on both sides met on 1st, 2d, 3d February 1732, at Newcastle, in order to carry the said Articles into Execution, it was very cold and severe Weather. And in this Affirmant's Opinion, the Absence of the Commissioners, on either side, for an Hour or two on said 3d of February, could not be such a Hindrance, as to prevent the Execution of the Articles, within the Time limited by the same.

**James Steel, [Lib. C. Fol. 559. Int. 119. Fol. 576.]*

He also says the Spring and Fall are the properest Seasons, when the Work is to continue for a length of Time, and believes that, to run and mark out the Circle, and the several Lines agreed on by the Articles, would at least require three Months. He says that on 1st, 2d, and 3d February 1732, it was extreme cold and severe Weather, and the Creeks being frozen over,

and the Ground covered with Snow, and that the Absence, or Non-Attendance, of the Commissioners, on either side, for an Hour or two beyond the Hour of the Adjournment, on any of those Days, could not, in his Judgment, be such a Prejudice or Hindrance to the Execution of the Articles, as that the said Circle and Lines could not, by reason of such Absence of Non-attendance, be run, markt or laid out, within the Time limited by the Articles.

Benjamin Tasker, the Defendant's. Commissioner and Witness.
but cross examined [Lib. E. fol. 49. Int. 19. fol. 70.]

Is but little acquainted with, and can't well judge, what are the fittest Seasons to run and mark Lines in the Woods, but believes the Month of October is the properest Season for that Work. That the running and marking the Circle and Lines, pursuant to the Articles, would, in his Judgment, have taken near 3 Months. That at the Meetings of the Commissioners at Newcastle on 1st. 2d. 3d February, the Weather was very unpleasant, there being then a great Snow upon the Ground, and a Thaw upon that. That the Non-attendance, or Absence of the Commissioners on either side, for an Hour or two beyond the Time of Adjournment, could not make any Difference, or prevent the running the Lines within the Time for that purpose limited in the Agreement.

NOTE—Why then, did they, so often, refuse our repeated Requests to proceed?

**James Steel, [Lib. C. fol. 559. Int. 82. fol. 610.]*

That very soon after breaking up of the Defendant's Commissioners as aforesaid, the Plaintiffs Commissioners sent a verbal Message by Robert Charles one of the Plaintiffs Commissioners, who was accompanied by John Georges deceased, to the Defendant's Commissioners, acquainting them, that some Business might be done before Dinner was ready, and therefore they desired them to meet the Plaintiffs Commissioners, immediately, in the said Court House, to proceed in the said Business; That in a short time after, the said Robert Charles and Georges returned, and the said Charles said he had acquainted Mr. Ogle and some others of the Defendant's Commissioners, with the said Message, and that Mr. Ogle had refused to meet the Plaintiffs Commissioners, alledging for Reason, that if any Advantage had accrued to Lord Baltimore, by the Failure of the Plaintiffs Commissioners that Morning, he could not answer it to his Lordship to give it up.

Andrew Hamilton,

Speaks to this first verbal Message.

John Georges's

Deposition signed by him, he being proved dead, you have among the Written Evidence.

Samuel Preston [*Lib. B. fol. 312. Int. 83. fol. 408.*] **James Steel* [*Lib. C. fol. 559. Int. 83. fol. 612.*]

Say that, after the Return of Robert Charles, all the Plaintiffs Commissioners, except Mr. Hamilton who was indisposed, and all the Defendant's Commissioners, dined together, at Newcastle, in a friendly manner, that 3d of February.

Samuel Preston, [*Lib. B. fol. 312. Int. 82. fol. 403.*] and [*Int. 84. fol. 409.*]

Says that on the same Day, in the Afternoon, about 4 o'Clock, Mr. Norris and the Affirmant waited on three of the Defendant's Commissioners, of which Ogle and Jennings were two, at their Lodgings in the Town, and informed them, that what had happened in the Morning, was occasioned by the Indisposition of one of the Plaintiffs Commissioners with the Gout, and other Accidents, and not with any design to avoid the Execution of the Commission, and therefore requested them to meet the Plaintiffs Commissioners, immediately, or that Afternoon, to proceed in the Execution of the Commission: To which Ogle answered, that the Plaintiffs Commissioners had been negligent in not meeting, and he apprehended it was done with Design: That, if the Case was his own, he should be very glad to oblige any Gentleman, but as it was an Affair of Lord Baltimore's, and he conceived the Plaintiffs Commissioners had given him an Advantage, he should not look upon it to be just to his Constituent, if he did not make the Use of it, or to that effect. Upon this some of the Pensilvania Commissioners, of which Mr. Hamilton was one, came into the Room, and then Jennings took up his Hat and walkt out of the Room. [Very artfully done! For, otherwise, there would then have been a Quorum on each Side] Then Mr. Hamilton said, Gentlemen, We have done no Business, this Morning. I have been at the Place of Meeting, and expected to see you there, shall we go now about the Business? To which Mr. Ogle replied, the Plaintiffs Commissioners had been negligent, and therefore the Defendant's Commissioners did not intend to meet them again. To this Mr. Hamilton said, that the Plaintiffs Commissioners had waited for the Defendant's Commissioners, the Day before, as long a time as they had waited for them on that, and yet, had not offered to take any Advantage, and therefore did not think it was fair for the Maryland Commissioners to attempt to take this Advantage now. And there upon Mr. Hamilton delivered a Paper-Writing to Mr. Ogle, which had been prepared to be

delivered to the Defendant's Commissioners in the Morning; upon which Paper, when Ogle had slightly lookt, he said here take your Paper, I have nothing to do with it. To which Mr. Hamilton replied, Sir, It's yours, you have it; and thereupon, Ogle flung the said Paper down in a Chair or Window, and the Plaintiff Commissioners departed. And says that that Paper contained Reasons, given by the Plaintiffs Commissioners, why the Circle should be extended to the Distance of 12 Miles from the Town, and a Declaration of the Willingness of the Plaintiffs Commissioners to proceed in doing the same, and a peremptory Demand of the Defendant's Commissioners, whether they would join therein? And that Paper was signed by Messieurs Norris, Hamilton, Steel, Charles, and this Affirmant Preston.

**James Steel*, [*Lib. C. fol. 559. Int. 84. fol. 612.*]

Confirms the last foregoing Account, and adds, that when Ogle would have returned the Paper, he said they could do nothing, there not being a Quorum of the Defendant's Commissioners present. And says that when Hamilton offered the Paper to Ogle, Jennings took up his Hat, and walkt out of the Room, which this Witness verily believes was done to avoid a Quorum of the Defendant's Commissioners being present, lest this should be construed a Meeting of the Commissioners. He also confirms Mr. Preston throughout. And adds, moreover, that Mr. Hamilton requested Ogle and Calvert to appoint any Place for the immediate Meeting of the Commissioners on both sides, and the Plaintiffs Commissioners would meet them according to such Appointment; but that Ogle replied, he could not consent to any other Meeting, because it would wave the Advantage he conceived Lord Baltimore had gained. That, thereupon, Mr. Hamilton offered to Ogle and Calvert a Written Notice signed by the Plaintiffs Commissioners, and directed to all the Defendant's Commissioners, requiring them to meet the Plaintiffs Commissioners at 6 o'Clock that Evening, at the said Court House; which Notice Ogle and Calvert refusing to receive, Hamilton laid it down, on the Table or Chair, before them, and then the Plaintiffs Commissioners departed. And says, that very soon afterwards he was informed and believes, that the rest of the Defendant's Commissioners were acquainted with the said Service of the said Notice, and were required to attend according to the Purport of the same Notice.

Andrew Hamilton,

Confirms all this, after Dinner, on the 3d of February.

Benjamin Tasker, the Defendant's Witness and Commissioner
cross-examined [*Lib. B. fol. 49. Int. 36. fol. 68.*]

That after the Commissioners of Maryland parted from two

of the Pensilvania Commissioners, between the Hours of Twelve and One, on 3d February 1732, at the Court-House in Newcastle, this Deponent, and as he heard, the rest of the Maryland Commissioners then at Newcastle, were in the Evening of that same Day requested by the Pensilvania Commissioners, to meet again, in order to proceed on the Business of running the Lines according to the Articles of Agreement.

Benjamin Eastburn, [Lib. C. Fol. 678. Int. 84. Fol. 711.]

Says that on 3d February 1732, about Three in the Afternoon, he heard Robert Charles, one of the Plaintiffs Commissioners read a written Paper to Ogle and Calvert, two of the Defendant's Commissioners, purporting to be a Notice from the Plaintiffs Commissioners to the Defendant's Commissioners, to meet the Plaintiffs Commissioners, that Evening, at 6 o'Clock, at the Court House. That after reading the said Paper the said Charles offered to deliver the same to the said Ogle, which the said Ogle refusing to receive, the said Charles laid the same down on a Chair. This Deponent does not know by whom the said Paper was signed. And very soon after, this Witness heard Charles give verbal Notice to Ward, Howard, Tasker and Jennings, four of the Defendant's Commissioners, to meet the Plaintiffs Commissioners that Evening at Six o'Clock in the said Court-House: To which some of them replied, It's very well, Gentlemen, or to that effect. That the Plaintiffs Commissioners afterwards did meet, in the said Court-House, at the appointed Hour, and there continued two or three Hours, but the Defendant's Commissioners or any of them did not appear there.

Samuel Preston, [Lib. B. fol. 312. Int. 85. Fol. 411.]

Says that four of the Plaintiffs Commissioners on the said 3d of February signed Notices to Ogle, Calvert, Howard, Ward, Tasker, and to the best of his Memory, Jennings, the Defendant's Commissioners then in Newcastle, requiring them to meet the Plaintiffs Commissioners at the Court House at 6 that Evening: which Notices he believes were delivered to three or more of the Defendant's Commissioners. He also says that the Plaintiffs Commissioners met at the Court House, at the said appointed Hour, and there attended till about 8; but the Defendant's Commissioners, or any of them, did not appear, or to his Knowledge, send any Message. He is not certain at what Hour the Notices were said to be delivered, but says it was some time before Six. And adds, that the Defendant's Commissioners continued in Newcastle from the time of serving the said Notices until the 4th Day of the said Month.

**James Steel, [Lib. C. fol. 559. Int. 85. fol. 620.]*

Says that the Plaintiffs Commissioners met at Six as aforesaid and attended till 8, and the Defendant's Commissioners, though then in the Town, neither came or sent. That the said 3d of February happened on a Saturday. And he adds That, after the Plaintiffs Commissioners returned from the said Court-House at Eight o'Clock the said Evening, they thinking it proper and necessary to sign and serve the Defendant's Commissioners, who were then still in the Town with fresh Notices, to meet them on the Monday following, at 10 in the Forenoon, at the said Court-House, sent Robert Charles and Mr. Georges, in order to serve such Notices upon all the Defendant's said Commissioners; but Ogle refusing to be seen by Charles (as he upon his Return to the Plaintiffs Commissioners informed them) they, thereupon, sent a Person again, that same Evening, to serve the said new Notices upon the rest of the said Maryland Commissioners; and which were accordingly that same Evening personally served upon the said Charles, Calvert, Jennings and Tasker (as the said Person upon his Return acquainted this Affirmant and the rest of the Plaintiffs Commissioners) and that the said Howard had also a Copy of the same Notice left for him, at his Lodgings, and which afterwards came to his Hand that same Evening, as this Affirmant believes, and was informed.

Samuel Preston, [Lib. B. Fol. 312. Int. 86. Fol. 413.]

He confirms what is said by Mr. Steel, rather more positively, as to the signing and serving that new Notice, for Monday the 5th of February.

John George.

Signed Deposition (he being dead) amongst the written Evidence, speaks to this Notice.

Andrew Hamilton.

In his Account also speaks largely hereof.

Benjamin Tasker, the Defendant's Witness and Commissioner cross-examined [Lib. E. fol. 49. Int. 31. fol. 69.]

Says that this Deponent, and as he believes, the rest of the Maryland Commissioners, were on the said 3d Day of February, served with a Notice in Writing to meet the Pennsylvania Commissioners for the Purposes aforesaid, on the then Monday following. And says that he did not avoid being served with such Notice, nor did any of the rest of the Maryland Commissioners, to his Knowledge, endeavour to avoid being served with such Notice.

Did they attend according to the Notice?

That our Depositions will immediately answer.

Gideon Griffith [*Lib. B. fol. 279. Int. 118. fol. 280.*]

Has heard that there were Articles of Agreement between the Parties, and has seen and read a printed Paper, which he was informed was a Copy thereof, and has heard that such and such Persons were appointed Commissioners on each side respectively, for executing the said Agreement. And says that Messieurs Norris, Hamilton, Charles, Steel, and another Person, whose Name he does not remember, as Commissioners on the Part of the Plaintiffs, met the said Ward, Tasker, and some others, whose Names he can't remember, at the Court House in Newcastle on 1st or 2d of February 1732, in order to carry the said Agreement into execution, as he heard; but knows not whether they proceeded in the Execution of the same, or not. And says he has neither heard or believes that the Pensilvania Commissioners when at Newcastle in the said Month of February, ever did refuse to meet the Defendant's Commissioners at the usual Place of Meeting in the said Town, to proceed in the Execution of the said Agreement, but has heard that the Defendant's Commissioners did then and there refuse to meet the Plaintiffs Commissioners, because the said Steel one of the Plaintiffs Commissioners had neglected to meet at the Time or Hour appointed for Meeting, as he had heard. [Fol. 285.] That afterwards, on 3d February 1732, this Deponent offered to deliver three several Notices in Writing, signed by the said Plaintiffs Commissioners, to Jennings, Tasker and one other (who he thinks was Michael Howard) Commissioners on the Defendant's Part, purporting, that as the Maryland Commissioners had refused meeting the Pensilvania Commissioners according to a former Notice given, the Plaintiffs Commissioners were willing to meet them on Monday the 5th of that Instant November, at 10 in the Forenoon, to proceed to the Execution of their respective Commissions, which Notices the said Jennings, Tasker, and the said other Person refused to receive, saying they would not receive any Papers from the Pensilvania Commissioners. That the Deponent then acquainted the said Jennings, &c. that the Pensilvania Commissioners had desired him to acquaint them, that they would meet them at another time, in order to proceed to Business, or to that effect, and thereupon left the said three written Notices, on a Table, in the same Room with the said Jennings, Tasker, and the said other Commissioner, whereon the said Jennings was then writing. And says that, next Morning, being Sunday 4th February aforesaid, the Defendant's Commissioners went out of Newcastle, and did not meet the Plaintiffs Commissioners on the said 5th of February but the Pensilvania Commissioners did attend at the same Town on that day, according to the Notice aforesaid.

Samuel Preston [Lib. B. fol. 312. Int. 87. fol. 415.]

Says that 4 or 5 of the Plaintiffs Commissioners met at the Court-House on the said 5th of February pursuant to the said Appointment, but none of the Defendant's Commissioners attended, they having left the Town the day before, as the Affirmant understood and believes.

**James Steel. [Lib. C. fol. 559. Int. 87. fol. 623.]*

Confirms Mr. Preston, with this Addition, that the Plaintiffs Commissioners when they so met, staid till 12 at Noon.

You will please to remember, that we in our Bill fol. 304. particularly charge, that upon 15th February 1732, after the Maryland Commissioners had run away from Newcastle and refused to meet our Commissioners, though so many times required, both by verbal and by written Notices, my Lord himself writ a Letter to Governor Gordon, one of our Commissioners (who is proved to be since dead) reviving the Meetings, and appointing, by his own Act and Deed, that we should run away to Joppa) in order to fix a Center somewhere in Newcastle Town, and appointing that new Meeting for the 7th of May. Mr. Gordon being proved to be dead, we could not get that Letter to prove, but my Lord himself in his Answer fol. 316. precisely and sufficiently admits his writing and sending that Letter.

We were then to suppose that he really intended the Commissioners should meet again to execute the Articles.

But you'll please to remember the Copy of the written Letter from Governor Ogle of the 8th of March markt No. 2. and the Copy of the printed Advertisement of the 21st of March 1732, markt No. 1. (both pending that Appointment of my Lord's) which are mentioned, according to their Dates, in the state of our written Evidence.

Now we come to apply our Proofs to them, and to bring them home to my Lord Baltimore himself, and to shew what a Part he acted while he himself had revived the Meetings.

Hugh Jones, of Maryland, Clerk, my Lord's own Witness, cross-examined [Lib. E. fol. 5. Int. 12. fol. 7.]

Is uncertain whether he has seen any written Advertisement of the same tenor or Date of the printed Exhibit markt No. 1. but has seen a printed Advertisement of the same Tenor and Date therewith. That he saw it in the Year 1732. when my Lord Baltimore was in Maryland: That he received it from Lord Baltimore, or from William Parks, then a Printer at Annapolis, but is uncertain from which of them.

The Same [Int. 13. fol. 8.]

To the best of his Remembrance, he did send one or more Advertisements of the Tenor and Date of that produced, to be set up upon the Borders of the three lower Counties; and that he sent them, at the Request of Lord Baltimore, with Intent to notify to any People who held Lands within the Province of Maryland [He tells us by and by, that he thinks the lower Counties, and even Philadelphia itself, is in Maryland] under any other than the Proprietor of Maryland, that they should apply in Time to Matthew Tilghman Ward, the Agent of the same Proprietor.

The Same [Int. 14. fol. 9.]

That by the Words (the Right Honourable the Lord Proprietor) in the said Exhibit No 1. The Lord Baltimore was meant. And apprehends that the Persons described in the said Exhibit by the Words (pretending to hold Lands by vertue of any Patents or Grants not deriving the same from the present Proprietor or his Ancestors) were meant such as held Lands by Grants from the Duke of York, or the Proprietors of Pensilvania, or by Purchases from the Indians, which had been taken up under Maryland Rights before.

Note, Benjamin Tasker [Lib. E. fol. 49 Int. 14. fol. 53.]

Says that by the Words Lord Proprietor in the said Exhibit, was intended the Defendant in this Cause.

The Same [Int. 15. fol. 10.]

That he knows there is an Officer in Maryland, called and known by the Name of the Lord Proprietor's Agent, whose Business he is not acquainted with, either in respect to Lord Baltimore, or others.

The Same [Int. 16. fol. 11.]

That he apprehends that Matthew Tilghman Ward, was Agent to Lord Baltimore on 8th March 1732, and supposes that John Ross was at that time Deputy to the said Agent.

The Same [Int. 32. fol. 11.]

That Lord Baltimore did arrive in Maryland, from Great Britain, as he believes in the latter End of the Year 1732, and resided chiefly at Annapolis while he staid in the same Province, but does not remember when he departed from the said Province on his Voyage to Great Britain.

The Same [Int. 33. fol. 12.]

That Samuel Ogle is generally reputed to be Governor of Maryland under Lord Baltimore, and was esteemed as Governor about 7 Months before Lord Baltimore's Arrival in Maryland, and from the Time of Lord Baltimore's Departure from the Province to this Time. And that the said Samuel Ogle resided

principally at Annapolis in the Years 1731, 1732 and 1733, and ever since, to this Time, except Part of a Summer in Baltimore County.

The Same [Int. 34. fol. 13.]

That he knows the Lord Baltimore and Samuel Ogle both lived in Annapolis a Part of the Time that Lord Baltimore was in Maryland, and believes that they principally resided there during all that time.

The last Matter is Confirmed by Benjamin Tasker [Lib. E. fol. 49. Int. 34. fol. 72.]

The Same [Int. 35. fol. 14.]

That he is acquainted with Governor Ogle's Hand-Writing, and has received several Letters from him, particularly one dated, as he believes, about 8th March 1732. Which Letter, or a true Copy of it, he sent either to Mr. Loyd, or Mr. Vanbeber, to shew to some of their Friends in Newcastle County. That such sending the said Letter, or a Copy thereof, was, as he remembers, at the Instance of the said Governor Ogle, with Intent to be shewn to Friends of the said Loyd or Vanbeber in Newcastle County. That some time after he wrote an Account of what he had done, to Governor Ogle, but received no Answer concerning the same, nor had any other Conversation with him, that he remembers relating thereto.

The Same [Int. 36. fol. 15.]

That the Hand-writing, for Attestation at the Bottom of the Copy of the Letter now shewn to him, No. 2, is the Hand writing of the Deponent. And the whole Endorsement upon the said Letter was wrote by this Deponent. And the name Hugh Jones is of this Deponent's Hand-writing, and stands for his proper name. That by the Word (Friends) in the Endorsement of the said Letter, he meant the Goodwins and others who lived near Apoquinomy in Newcastle County, on Lands which he supposed had formerly been taken up under Maryland Rights, but were then possest under other Rights.

The Same, [Int. 48. fol. 17.]

That he neither holds or claims any Lands which, he apprehends, will fall within the Province of Pensylvania or the three lower Counties, if the Lines which were intended to be run by the Articles should be establishd or if the Circle should be run at the Distance of 12 Miles from the Town. And apprehends he shall not be a Gainer if the Bounds of Maryland should be extended farther Northward than now supposed to be, or the three lower Counties should be adjudged to Lord Baltimore.

What a dishonest Proceeding this, while under a new Ap-

pointment for meeting to execute the Articles made by my Lord Baltimore himself! This is the Candor and Fairness they used.

This shews whether my Lord, and his Governor and Commissioners did, or did not, endeavour to avoid the Articles, by any other means except that of failing personally to appear at the Times appointed for Meetings. And this confirms most strongly what all our Commissioners say in Evidence on that Head by and by.

Samuel Preston, [Lib. B. fol. 312. Int. 90. fol. 419.]

Says that all the Plaintiffs Commissioners upon 28th March 1733, signed a Notice in Writing to the Defendant's Commissioners requiring them to meet the Plaintiffs Commissioners at Newcastle the 16th of April then next, which notice was delivered to William Biddle, who, he believes, (from an Affidavit of Biddle's that he has seen) did serve the same or Copies thereof, upon all the Defendant's Commissioners in Maryland, and in a few Days after the said 16th Day of March. And says that, immediately on Biddle's Return from Maryland he gave to some of the Plaintiffs Commissioners a cross Notice from the Defendant's Commissioners requiring the Plaintiffs Commissioners to meet the Defendant's Commissioners at Joppa in Maryland on 7th May.

William Biddle, [Lib. C. fol. 474. Int. 106. fol. 475.]

Has lookt on the Paper Writing markt B. 5. and says it contains a true Copy of seven Original Papers which were delivered by Governor Gordon and the rest of the Plaintiffs Commissioners who have subscribed the same, to him on said 28th March, to be served on the Defendant's Commissioners in Maryland. That he afterwards on 2d April following, served six of the same, upon Ogle, Calvert, Howard, Jennings, Tasker and Ward severally, but did not serve Loyd, he being dead or absent. And he, on the 3d of the said April, at Annapolis in Maryland, made Oath, before one of the Magistrates of the Provincial Court there of such several Services.

Samuel Preston, [Lib. B. fol. 312. Int. 91. fol. 421.]

Says that a Quorum of the Plaintiffs Commissioners met at Newcastle on 16th April according to the Notice given to the Defendant's Commissioners; but the Defendant's Commissioners, or any of them did not appear there.

Samuel Preston, [Lib. B. fol. 312. Int. 88. fol. 417.]

Believes Lord Baltimore was in Maryland on the 5th and 15th Days of February 1732.

Samuel Preston, [Lib. B. fol. 312. Int. 89. fol. 417.]

Knows the Town of Joppa in Maryland, which he believes is about fifty or sixty Miles from Newcastle Town; between which Places there are several Fords which are difficult to pass after great Rains, besides the great River of Susquehannah. That the said Town of Joppa is a small Village with but few Houses in it, and can afford but very ordinary Entertainment for Gentlemen or Strangers. That, at the former Meetings of the Commissioners at Newtown, and Newcastle it was agreed, by the said Commissioners, on both sides, that thefirst thing necessary to be done was to run the Circle about the Town of Newcastle, and, in order thereto, that a Center for the said Circle was to be fixed. And says that Joppa was not a convenient Place to fix the said Center, and, as he apprehends, it could not be done there with Certainty.

Samuel Preston, [Lib. B. fol. 312. Int. 92. fol. 422.]

That a Quorum of the Plaintiffs Commissioners met at the Town of Joppa in Maryland, on 7th May 1733. That going thither was very inconvenient : because it was a long Journey thither, the Roads very bad, their Entertainment at the said Town very indifferent, and it was quite out of the Way of the Business the Commissioners had to do. That a Quorum of the Defendant's Commissioners met them at Joppa on 7th and 8th May. That on the 2d or 3d Days of the Commissioners Meetings at Joppa, it was proposed, by one of the Defendant's Commissioners, seeing they could not agree upon running the Circle at Newcastle aforesaid, to adjourn to some other Place. And, after several Proposals and Debates thereon, it was, on the 9th of May, agreed to adjourn to Philadelphia, which is about ninety Miles distant from Joppa. Which was agreed to by the Plaintiffs Commissioners, in regard to the Convenience of the Defendant's Commissioners, who were to wait on Lord Baltimore in his way to Philadelphia. Believes that Adjournment was to 21st May, but it was agreed, if the Defendant's Commissioners, who were to wait on him to Burlington, could not return from thence in convenient time to Philadelphia, then the Defendant's Commissioners were to give the Plaintiffs Commissioners Notice to meet at Philadelphia, in some short time afterwards, and no Advantage was to be taken of their not meeting on the Day to which they adjourned. And believes it was also proposed and agreed to, that the Maryland Commissioners should not be staid at Philadelphia, from returning to Maryland, above one Day, and that their next Meeting should be in the County of Newcastle, on the 18th of June then next following.

Jeremiah Langhorne, [*Lib. C. fol. 719. Int. 92. fol. 726.*]

Says the Defendant's Commissioners did meet the Plaintiffs Commissioners at Joppa, on 7th May; and it was very inconvenient for the Plaintiffs Commissioners to meet them at that Place, where he conceives nothing could be done to put the Articles in Execution. That the Commissioners met at Joppa again, on 8th May. That on the 2d Day of the Meeting at Joppa, several Disputes arose between them, concerning the Dimensions of the Circle, and the Defendant's Commissioners insisted it should be a Circle whose Circumference was 12 Miles, and the Plaintiffs Commissioners insisted it ought to be a Circle of 12 Miles Radius. That thereupon, one of the Defendant's Commissioners (Mr. Ogle, according to his best Memory) proposed, seeing they could not agree upon the Extent of the Circle, to adjourn immediately to Cape Hinlopen, to run the Line from thence, which seemed to be generally agreed to: And then the Plaintiffs Commissioners proposed to go immediately to the said Cape, and said they had brought Artists with them, who would run the said Line. [Observe, we were always ready to do any thing] To which Ogle replied, that the Word, immediately as used by him, was to be understood with some Qualification, and that it meant only to go there, as soon as they conveniently might. [Well! when was that to be?] And added, that Lord Baltimore was in Chesopeak Bay, in his Way to Burlington in New Jersey, whither they were obliged to wait on his Lordship. Then some of the Defendant's Commissioners proposed to adjourn to Philadelphia, which is about 100 Miles distant from Joppa; which being agreed to by the Plaintiffs Commissioners, on the 9th of May, they adjourned accordingly to some Day in that Month, as the Affirmant believes, but does not remember the particular Day.

Benjamin Tasker, the Defendant's Witness and Commissioner, being cross-examined, [*Lib. E. fol. 49. Int. 16. fol. 66.*]

Names the Commissioners who met on both sides at Joppa on 7, 8, and 9th May, and that they adjourned to Mr. Norris's House at Philadelphia, but at whose Instance, or what the Reasons assigned for such Adjournment were, does not particularly remember, but believes such Adjournment was made at the Instance of the Maryland Commissioners.

Jeremiah Langhorne, [*Lib. C. fol. 719. Int. 93. fol. 731.*]

He was present at the Meeting between Quorums of the respective Commissioners at Joppa, which as well as he remembers was on 7th May 1733. That before any Debates between them, Mr. Ogle observing the Affirmant there, askt who the Affirmant was? And said he did not know that any Person,

except the Commissioners, had any Business there. Whereupon Jennings, one of the Defendant's Commissioners said, perhaps the Gentleman is a Commissioner. To which Mr. Hamilton, one of the Plaintiffs Commissioners, replied. No, he is not a Commissioner, but he is a Gentleman that the Plaintiffs Commissioners have brought with them to be a Witness, and prevent any Misrepresentations of their Proceedings. That then the said Ogle, after some more Objections to any Stranger's being present during their Debates, said he was contented, provided they would permit some other Person, on behalf of Maryland, to be present likewise. To which Mr. Hamilton replied with all his heart, as many as he pleased. Whereupon one Beale was called in by the Defendant's Commissioners. And thereupon, the Debate, mentioned by this Affirmant in Answer to the 92d Interrogatory, concerning the Dimensions of the Circle arose between the Commissioners; Whereupon the Plaintiffs Commissioners insisted that the Arguments on the same should be reduced to Writing by the Commissioners on each side, which was accordingly done by delivering written Papers to each other. To all, or many of which, this Affirmant was a Witness, by subscribing his Name thereto. That the Reason given by the Plaintiffs Commissioners why the said Arguments should be reduced into Writing, were to prevent any Misrepresentations on either side, of what was said therein.

The Same to the [94th Int. fol. 734.]

Says he was present also at the Meeting of the Commissioners on the 8th of May.

The Same to the [97th Interrogatory, fol. 735.]

Says that Quorums of the said Commissioners met at Joppa on the 9th of May.

James Logan, [Lib. B. fol. 76. Int. 95. fol. 192.]

Says that beside running the Circular Line, there were, in his Judgment, five strait Lines, necessary to be run in order to compleat the carrying into Execution the Agreement, and that not more than two of those strait Lines would be affected or altered, according as the said Circle should be drawn at twelve, or at less than two, Miles Distance from the Town of Newcastle.

Samuel Preston, [Lib. B. fol. 312. Int. 98. fol. 428.]

Says the Defendant's Commissioners did not return from Burlington by 21st May, but gave notice they could not conveniently meet that Day, but would meet at Philadelphia on 26th May. Accordingly Quorums of the Commissioners met at Philadelphia on that Day. When, nothing material was done,

but the Defendant's Commissioners then proposed to adjourn to the 3d of September, alledging for Reasons, that they were obliged to attend on Lord Baltimore down to Virginia, on his Way to England, and particularly, that as Lord Baltimore had taken the Government of Maryland upon him since his Arrival, 'twas necessary for Mr. Ogle to go down to Virginia, to be qualified, a-new, before the Governor of Virginia, in order to re-assume the said Government upon Lord Baltimore's Departure. For which Reasons, and on Consideration that the Business of their Commissions could not well be done in the mean time, the Woods being full of Leaves, and the Season hot, the Plaintiffs Commissioners consented to said Proposal, and they adjourned accordingly, to meet at Newcastle Town on 3d September.

James Logan, [Lib. B. fol. 76. Int. 98. fol. 193.]

Is rather stronger in the last foregoing Account; for he assigns no other Reason for that very long Adjournment from May to September, than only the Engagements the Maryland Commissioners pretended to be under, on their side.

Samuel Preston, [Lib. B. fol. 312. Int. 99. fol. 431.]

That five of the Defendant's Commissioners (amongst which was John Ross by vertue of a new Commission) met six of the Plaintiffs Commissioners at Newcastle Town, on 3d September 1733, and there continued several Days. During which Days, upon several Debates, the Defendant's Commissioners did declare that they could agree to run out no other Circle than one whose Circumference was twelve Miles; and the Plaintiffs Commissioners insisted that the same ought to be a Circle of 12 Miles Radius from the said Town. Whereupon, the Plaintiffs Commissioners did require the Defendant's Commissioners to state their Proposals and Arguments in Writing, and they would answer them in the same manner, which was accordingly done, by delivering several written Papers to each other. But the Commissioners not agreeing, a Proposition was made, to the best of the Affirmant's Memory, by one of the Defendant's Commissioners to adjourn, to a Time he has forgot; but it was afterwards agreed by all the Commissioners to adjourn to the 14th of November, then next following, at Newcastle Town aforesaid.

James Logan, [Lib. B. fol. 76. Int. 99. fol. 197.]

That Quorums of the Commissioners met at Newcastle on 3d, 4th, 5th and 6th September (Governor Ogle being sick, as it was said) and during those Days several Adjournments were made, and divers Papers past between the Commissioners on each side. And says, that on the 5th or 6th of September it

being proposed by the Defendant's Commissioners to adjourn the next Meeting to 14th November, the same was, after some Debates, at length, agreed to by the Plaintiffs Commissioners. *Samuel Preston*, [*Lib. B. fol. 312. Int. 100. fol. 434.*]

That Ogle, Tasker, Jennings, Harris and Ross, Commissioners for the Defendant, and Messieurs Norris, Logan, Hamilton, Steel and the Affirmant, Plaintiffs Commissioners, met at Newcastle Town, on 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24th. November 1733. And during those days the respective Commissioners for the Plaintiffs and Defendant did not recede from, but declared they respectively adhered to their former several Opinions, concerning the Dimensions of the Circle. And says there was some verbal Proposals made by the Commissioners on each side, but the principal Part of their Debates were transacted by written Papers, delivered to each other. That during the said several Meetings, and as he believes either on 14, 15, or 16th November, some of the Defendant's Commissioners verbally declared, that it was to no purpose for the Commissioners to continue longer together, and proposed, that the Commissioners should discontinue their Meetings, and depart without further Adjournment. To which the Plaintiffs Commissioners did not consent or agree.

James Logan [*Lib. B. fol. 76. Int. 100. fol. 199.*]

Fully and strongly confirms the foregoing, and says, that Mr. Ogle repeatedly proposed upon 14, 15, and 16 November, to break up, and discontinue the Meetings, and depart without Adjournment, and that the Plaintiffs Commissioners in general, did during those three Days, decline to agree to such Proposal.

The Same, [*Int. 101. fol. 203.*]

Says that at the Meeting of the said Commissioners on or about 19th November, it was repeatedly alledged and declared to be the Opinion of the Defendant's Commissioners, that no other Consequence could arise from the Difference of Judgment between them and the Plaintiffs Commissioners than that either the Commissioners should continue at Newcastle till 25th December then next, without running the Circle, or depart from Newcastle without further Adjournment.

The Same, [*Int. 102. fol. 204.*]

That at the said Commissioners meeting on or about 23d November, it was proposed by Ogle or Jennings (but which he does not now remember) on the Part of the Defendant's Commissioners, that as the Commissioners had continued so long together, in exchanging of Papers, and were still as far off from agreeing as ever, they should then depart. And thereupon, it was agreed by the Commissioners on both sides that some par-

ting Minute should be prepared against the next Day, and that the same should be drawn up by Jennings and the Affirmant.

Samuel Preston, [*Lib. B. fol. 312. Int. 102. fol. 437.*]

Says to the like effect, but does not remember who of the Commissioners made that Proposal.

The Same, [*Int. 103. fol. 438.*]

Says that the Plaintiffs and Defendant's Commissioners did, at Newcastle, on 24th November, 1733, sign a parting Minute dated that Day, and then departed without further Adjournment.

James Logan, [*Lib. B. fol. 76. Int. 103. fol. 438.*]

Says the same.

Samuel Preston, [*Lib. B. fol. 312. Int. 66. fol. 340.*]

Says that he knows that several Persons were appointed, and acted as Commissioners on the Plaintiffs Part, in order to carry into Execution the Articles of 10th May 1732, viz. Patrick Gordon, Lieutenant-Governor of Pensilvania, who died in August 1736, Isaac Norris, who died between 5 and 6 Years ago, and this Affirmant, James Logan, Andrew Hamilton and James Steel, who are still living, and Robert Charles, who departed about a Year ago for Great Britain, where the Affirmant supposes he is still living. That he hath lookt upon the Paper-Book or Writing marked Letter 'A' now produced and which hath a Great Seal hanging to it, and knows the said Seal to be the Great Seal of Pensilvania, and hath lookt towards the latter End of the said Paper-Book, in Page 90, where there is a Date, viz. (Philadelphia, January 10th 1733-4) And saith that the Names, P. Gordon, I. Norris, S. Preston, J. Logan, A. Hamilton, J. Steel, and R. Charles, there set, are their several proper Hand-writings, and were so wrote and subscribed by them respectively, in this Affirmant's Presence. And saith he has also looked upon the last Page of the said Book, and is well acquainted with the several Hand-writings of the said Gordon, Norris, Logan, Hamilton, Steel and Charles, having frequently seen them write, and saith their Names, there subscribed, are their respective Hand-writings and were wrote and subscribed by them severally, in this Affirmant's Presence. And that Samuel Preston, there also set and subscribed, is the Affirmant's own Hand writing, and was by him there subscribed, at the same time with the rest of the said Subscribers. And saith the Name Thomas Græme there also subscribed, is the proper Hand-writing of Thomas Græme, who on 20th June 1734, was, and is still one of the principal Judges of Pensilvania, and then had,

and still has, Power to administer Oaths to, and take Affirmations from Persons in Pensilvania aforesaid; And saith that the several Names following, viz. J. White, S. Mickle, J. Richmond, and W. Spafford, there also appearing to be subscribed, are their several Hand-writings, and were there wrote and subscribed by them respectively, in this Affirmant's Presence. And saith that on 20th June 1734 the said Gordon, Hamilton, and Charles, made Oath, and the said Norris, the Affirmant, Logan, and Steel, being Quakers, did solemnly affirm to the Truth of the Affidavit and Affirmation comprized and wrote in the said last Page of the said Book, before the said Thomas Græme, and in the Presence of the said White, Mickle, Richmond and Spafford and saith the Occasion of the Affidavit and Affirmation being so made and taken was from an Apprehension that there would be some Complaint made to the King and Council, for a Failure in the Execution of the said Articles of Agreement of 10th May 1732.

James Logan, [Lib. B. fol. 76. Int. 66. fol. 163.]

Proves the same in the self-same Words as Mr. Preston, it being the Return or Report then made, on 10th January 1733, and sworn and affirmed to on 20th June 1734, containing most minutely the like Account of the Commissioners Proceedings, in order to have carried the Articles into Execution, as are now given by them in Detail, upon a fresh Examination in the Cause as to the Proceedings and Behaviour of the Commissioners at every one of the several Meetings from 6th October 1732, to 24th November 1733.

**James Steel*, [Lib. C. fol. 559. Int. 66. fol. 565.]

Also proves the same Report in the self-same Words as Mr. Preston and Mr. Logan.

Andrew Hamilton, [Lib. C. fol. 775. Int. 117. fol. 874.]

Says that the said Report is a true Narrative of the most material Proceedings of the said Commissioners. And says that the Minutes of the several Transactions of the Commissioners which are related and set forth therein were carefully taken by the Plaintiffs Commissioners, or some of them, at the Time, or within a Day of the respective Times, on which the said several Transactions happened. And that the Copies of Papers at large, set forth, and comprized in the said Report, are true Copies of the several Original Papers which past between the Commissioners on both sides, of which they purport to be Copies, and then gives the like Account as the former, of the making up, signing, swearing, and affirming to that Report, and the Occasion thereof, as all the other living Commissioners have before done.

Thomas Græme, [*Lib. C. fol. 666. Int. 117. fol. 667.*]

Proves that all the Commissioners signed their Affidavit, and respectively swore and affirmed to the same, before him, on 20th June 1734, and that he was in such Office, and had Power to administer Oaths and Affirmations.

But if there be any Occasion, it is easier to turn to the fresh Examinations in the Cause.

Samuel Preston, [*Lib. B. fol. 312. Int. 62. fol. 452.*]

That he was one of the Commissioners appointed by the Plaintiffs to run and make the Lines mentioned in the Agreement, and as such, did attend all the Meetings had between the Plaintiffs and Defendants Commissioners for the Execution of the said Articles. And says, he never received, directly or indirectly, from, or on behalf of the Plaintiffs, any Order, Direction or Instruction or Intimation to retard, evade, frustrate, avoid or impede the Execution of the said Agreement. And that neither he, nor any other of the Plaintiffs Commissioners, to the Knowledge or Belief of the Affirmant, did, at any time, or in any manner, endeavour to retard, avoid, or frustrate the Execution of the said Agreement.

James Logan, [*Lib. B. fol. 76. Int. 62. Fol. 159.*]

Was also one of the Plaintiffs Commissioners for the Purpose aforesaid, and attended the Execution of the said Commission three several Times [He means Sessions] at Newcastle, and once at Philadelphia [Note, he being infirm, did not go down to Newtown, nor yet to Joppa, in Maryland] That neither the Affirmant, or any of the Plaintiffs Commissioners, to his Knowledge or Belief, ever did, at any Time, or in any manner, endeavour to retard, avoid, or frustrate the Execution of the said Commission; nor did he receive directly or indirectly, at any Time, from, or on behalf of the Plaintiffs, any Order, Direction, Instruction or Intimation to retard, delay, evade, avoid, frustrate, or impede the Execution of the said Commission.

Andrew Hamilton, [*Lib. C. fol. 775. Int. 62. fol. 776.*]

That he was appointed one of the Plaintiffs Commissioners, and attended all the Meetings of the Commissioners that were held on that Business from time to time (except that on the 3d of February 1732) That he never received, directly or indirectly, any Order, Direction, Instruction or Intimation from, or on behalf of the Plaintiffs, or any of them, to retard, evade, avoid, frustrate or impede the Execution of the said Commission. But on the contrary, this Deponent and the rest of the Plaintiffs Commissioners, were several times, and very frequently, while the Execution of the said Commission was depending, desired and very much pressed, by the Plaintiff Thomas Penn, and

it was his constant Instructions to this Deponent and the rest of the Plaintiffs Commissioners, to use all the Dispatch and Candor they possibly could, to carry the said Agreement into Execution. Says he never did, in any manner, endeavour, or do any Act or Thing that he conceived could or would frustrate, avoid or hinder the Execution of the said Commissions; nor, to the best of his Knowledge and belief, did any of the rest of the Plaintiffs Commissioners endeavour or do any thing to frustrate, avoid or hinder the Execution of the same Commissions.

**James Steel, [Lib. C. Fol. 559. Int. 62. Fol. 561.]*

That he was appointed one of the Plaintiffs Commissioners, and did attend on all the Days that the Plaintiffs and Defendant's Commissioners met for that Purpose, (except the two last Days of their meeting) That he never did receive, directly or indirectly, from or on behalf of the Plaintiffs, any Order, Direction, Instruction, or Intimation to retard, evade, avoid, frustrate or impede the Execution of the said Commission; and that, neither he, nor to his Knowledge or Belief any other of the Plaintiffs, Commissioners, ever did, in any manner endeavour to avoid, retard or frustrate the Execution of the said Commission, but on the contrary, did all that was in their Powers to execute the same.

Note well.

We never had any more than our original seven Commissioners: two of which are proved to have been dead, and the third come for Europe, at the Time we examined our Witnesses, and we have examined every one of the other four, who concur precisely in this general Account at all Times whatsoever. On the other Hand, the Defendant chopt and changed his Commissioners till he made his original seven to be ten in Number; of those ten he has examined only three: against whom there are many Objections also: but as to this present Point, they are most carefully askt, and as cautiously answer, that they did not contrive along with the Defendant to avoid the Agreement at one particular Time when it was no way possible for them to have done it, at that Time.

Samuel Preston, [Lib. B. Fol. 312. Int. 63. Fol. 453.]

Says that Samuel Ogle, Charles Calvert, P. Loyd, M. Howard, M. T. Ward, R. Bennett, Benj. Tasker, E. Jennings, James Harris and John Ross [ten] were the Persons who, at several Times, appeared and acted as Defendant's Commissioners. And says that none of the said several Persons, in the Opinion and Belief of the Affirmant, did proceed with Fairness, Candour or Dispatch, in the Service mentioned in their Commissions. But, on the contrary, did shew an Unwillingness and Reluctance to exe-

cute the Articles of Agreement according to the plain Meaning of the said Articles, as the Affirmant, and, he believes, the rest of the Plaintiffs Commissioners understood them, by using many Arts and Methods to prevent, frustrate, evade and delay a fair Execution of the same.

**James Steel, [Lib. C. Fol. 559. Int. 63. Fol. 563.]*

He also names the same ten Persons who appeared and acted as the Defendant's Commissioners, and says he verily believes the said Commissioners, or any of them, did not conduct themselves with Fairness, Candour or Dispatch in carrying the said Articles into Execution; but, as it appeared to the Affirmant, did shew an Unwillingness and Reluctance to execute the same according to the plain Directions of the same Articles, and also that they the Defendant's Commissioners did use several Arts and Methods, to delay, prevent and evade the Execution of the said Articles, and marking the Lines and Bounds therein mentioned, pursuant to the true Intent and Meaning of the same Articles.

James Logan, [Lib. B. Fol. 76. Int. 63. Fol. 161.]

Names the same ten Persons who appeared and acted as the Defendant's Commissioners at the Meetings where he was present. Says that all the Commissioners on the Part of Maryland appeared to him to have subjected their Conduct, in a very great measure, if not entirely, to the Direction of the said Governor Ogle. And it also appeared to this Affirmant, from the first Time of the Meeting at Newcastle in October, from the general Conduct of the said Governor Ogle, that he had fully purposed and designed to evade the Execution of the said Articles.

Samuel Preston, [Lib. B. Fol. 312. Int. 109. Fol. 444.]

That the Commissioners of the Plaintiffs and Defendant, to the best of his Memory, met 25 or 26 Days about the Execution of the said Agreement of May 1732. The first of which Days was 6th October 1732, and the last 24 November 1733. Says he verily believes there was sufficient Time, during such their Meetings, and before 25 December 1733, to have run and marked out the Circle, and all the Lines directed by the said Agreement to be run, if no Difference, or pretended Difference in Judgment had arisen amongst the Commissioners; which running and marking out the said Circle and Lines, the Affirmant says, was not obstructed or hindred by the Non-Attendance of the Commissioners, on either Side; but, as it appeared to the Affirmant from the general Actings and Behaviour of all the Defendant's Commissioners, was wholly owing to an Unwillingness in all the Defendant's Commissioners to run or mark

out the said Circle and Lines. And further says that he, from time to time, always met, with full Intention and Design to execute the said Agreement, and verily believes, from the general Conduct, Actings and Behaviour of all the rest the Plaintiffs Commissioners that they from time to time, always met with the same Design and Intention.

James Logan, [*Lib. B. Fol. 76. Int. 109. Fol. 212.*]

Says the like, that there was abundant Time to have run and markt the Circle and all the Lines, if no Difference, or pretended Differences in Judgment had arisen amongst the Commissioners. And says the running out the Circle and Lines was not prevented, by Non-Attendance of the Commissioners on either Side. But was occasioned, as he believes, by the long Adjournments prest and insisted on by the Defendant's Commissioners; owing (in his Opinion) to a formed Resolution on their Parts to evade the Execution of the Agreement, by any means but that of failing in their Meetings according to their Adjournments. He likewise says, that he always had a full Intention to execute the Agreement. And it was apparent to him, and he verily believes, from the Actings and general Behaviour of the rest of the Pensilvania Commissioners, that they met and acted from time to time, with full Intention to execute the said Agreement. And it was apparent to him, and he verily believes from the Actings and general Behaviour of the Maryland Commissioners during all the said Meetings he was at, (which were on nineteen of the said Days,) that they did intend to delay and avoid the Execution of the said Agreement. And the Reasons for his Belief are that they early alledged they could not find a Center, and then asserting and insisting that by a Circle expressly directed to be run at the Distance of 12 English Miles from Newcastle, was intended a Circle of less than two Miles Distance from Newcastle.

Andrew Hamilton, [*Lib. C. Fol. 775. Int. 109. Fol. 779.*]

That the Commissioners of the Plaintiffs and Defendant, who acted in the Execution of the Agreement May 1733, under the Commissions mentioned in his Answer to the 62d Interrogatory, met on that Business on 26 several Days. The first of which was the sixth October 1733, at Newtown in Maryland, and the last on the 24th November 1733, at Newcastle Town, according to the best of this Deponent's Remembrance. And saith that there was, in his Judgment and Belief, abundantly more than sufficient Time, during such the said Meetings of the said Commissioners, and before the 25th Day of December 1733, to have run and marked out the Circle, and all the Lines directed to be run and markt out, by the said Agreement, if no

Difference or pretended Difference in Judgment, concerning the same, had arisen amongst the said Commissioners. And saith that he hath been credibly informed, by Surveyors and Persons, who are well acquainted with, have been much conversant in, such Business, and this Deponent believes it to be true, that two Months, and a little more, at a proper Season of the Year, would be sufficient for the running and marking out the Circle and Lines aforesaid. And saith that running out of the said Circle and Lines was not prevented by the Non-Attendance of the said Commissioners, on either Side; and that the said Commissioners, on either Side, or a Quorum of them, did not absent themselves, or stay from any of the said Meetings, beyond the Time of Adjournment, above an Hour or two at most. That the Reason assigned, by the Defendant's Commissioners for their not joining with the Plaintiffs Commissioners in running out the said Circle and Lines was, their not agreeing with the Plaintiffs Commissioners in their Opinion or Construction of the Meaning of the said Articles of Agreement of May 1732; but, it was apparent to the Deponent, that the Unwillingness of the Defendant's Commissioners to carry the said Agreement into Execution, was the true Cause or Reason why the said Circle and Lines were not run and markt out by the 25th Day of December 1733. And saith that he is well satisfied that all the Commissioners on the Part of the Plaintiffs, always met and acted, from time to time, with full Intention to execute the said Agreement; and on the contrary, that it was apparent to him, and he verily believes, from the Tenor of the Actings, and general Behaviour of the Commissioners who acted from time to time on the Part of the Defendant in the Execution of the said Commission and Articles of Agreement, never intended to carry the said Agreement into Execution. And that the Reasons for such this Deponent's Belief therein are, as follows, viz. That Samuel Ogle Governor of Maryland, and Patrick Gordon Governor of Pensilvania, having agreed that the Commissioners on each Side should meet at Newtown in Kent County in Maryland, on the 6th of October 1732, in order to carry the said Articles of Agreement into Execution, the said Samuel Ogle, Philemon Lord, Charles Calvert, Michael Howard, Richard Bennett, Matthew Tilghman Ward Esqs; Commissioners on the Part of the Defendant; and the said Patrick Gordon, Isaac Norris, Samuel Preston, this Deponent, James Steel and Robert Charles, Commissioners on the Part of the Plaintiffs, met, accordingly, at Newtown aforesaid on the said 6th of the said October, and agreed to meet again the next Day, being the 7th of the said October, at the same Place, and met accordingly on the said 7th Day of October and the

Articles of Agreement between the Plaintiffs and Defendant's and the Commission to the before-named Commissioners on the Part of the Plaintiffs, and also the Commission to the before-named Commissioners on the Part of the Defendant, being produced and read, the said Mr. Ogle, on the Part of the Defendant, objected to the Validity or Sufficiency of the said Commission from the Plaintiffs to the said Patrick Gordon, Isaac Norris, Samuel Preston, this Deponent, Robert Charles and James Steel, and also to James Logan Esq; directed, for want of proper Persons being joined in the granting of that Commission, and shewed an Indorsement, made upon the Defendant's Part of the said Articles, which Indorsement was signed, as this Deponent remembers, with the Names Letitia Aubrey, William Penn, and others, purporting their Consent and Approbation of the said Articles of Agreement, and that they would do nothing to frustrate or make void the same, or to such Effect; and therefore, urged that the Persons, signing the said Indorsement, ought to have joined in granting the said Commission to the said Commissioners on the Part of the Plaintiffs, and, for not having so done, the said Commission was not sufficient to authorise the Plaintiffs Commissioners to carry the said Articles into Execution; to which it was answered, by the Plaintiffs Commissioners, that, tho' the Defendant might think it proper, for his own Security, or any other Reason, to take such an Indorsement as aforesaid, from the said Letitia Aubrey and William Penn, or any others, not being Parties to the said Articles, it could not affect the said Commission granted by the Plaintiffs; and much being said, by the Defendant's Commissioners, and those on the Part of the Plaintiffs, touching the said Objection, the said Mr. Ogle said at length, he would wave the same, for the present; and then, the Commissioners proceeded to consider what was first to be done towards carrying the said Articles of Agreement into Execution, and the Plaintiffs Commissioners desiring the said Articles themselves might be read, it was said, by the said Mr. Ogle, that there was no need of having recourse to the Articles, for that the Commissions on each Side, were the only Authority by which the Commissioners could act, and they must pursue the Directions of the Commissions, as their Guide; but without further Argument, it was agreed that the Circle, about the Town of Newcastle, was the first Work enjoined to be done by the said Commissions, and thereupon the Defendant's Commissioners proposed to adjourn to the 30th of October; to which it was said, by the said Plaintiffs Commissioners, that this was the most proper Season of the Year for running and marking out Lines in the Woods, and that they had brought their Artists

and Surveyors, to run the Lines directed to be run, by the said Articles; and therefore proposed, that the Commissioners might proceed to run the same accordingly; but it being alledged, by the Defendants' Commissioners, that the publick Business of their Province required their Attendance, and that one of their Artists, on whom they chiefly relyed, was sick, therefore, they insisted they could not attend the Business of running the said Lines before the said 30th of October. Whereupon, the Plaintiffs Commissioners (tho' unwillingly) consented to adjourn to the said 30th of October, to meet at Newcastle aforesaid. Then it was moved by the Plaintiffs Commissioners, that a Minute should be taken of the Meeting of the Commissioners and the Adjournment; which was opposed by the said Mr. Ogle, who said it would be troublesome to the Commissioners. The Plaintiffs Commissioners then proposed the introducing of one Clerk, or more, to take and keep the Minutes of the Commissioners Proceedings, but this was also opposed by the Defendant's Commissioners, as a Thing unnecessary, and would occasion great Trouble and Delay in settling such Minutes. Then, it was said by the Plaintiffs Commissioners, that it would not appear that ever the Commissioners had met, upon the Business mentioned in the said Articles, or that they had adjourned to any Day; That, therefore, they believed it absolutely necessary that Clerks should be introduced, as no Persons were present but the Commissioners themselves; but this was absolutely refused by the Defendant's Commissioners as unnecessary. It was then insisted by the Plaintiffs Commissioners, that a Minute should be taken of the Commissioners Meetings and Adjournments, and signed by a Commissioner on each Side. This was long opposed by the Defendant's Commissioners, but, at last, it was agreed that such a Minute should be made, and Michael Howard, one of the Defendant's Commissioners, and Robert Charles, one of the Plaintiffs Commissioners, were appointed to draw up the same, which they accordingly did. And the Commissioners being met, in the Evening of the 7th of October, at the House of Mr. James Harris, where the said Mr. Ogle lodged, and the Plaintiffs Commissioners having, beforehand, desired Mr. David French and Mr. James Hamilton, then at Newtown aforesaid, to be present in the Room with the said Commissioners, to be Witnesses to the exchanging of the said Minute, the said Mr. Ogle, seeing the said two Persons in the Room, asked them whether they were Commissioners? Whereupon they left the Room, believing, as they said, that it was not agreeable to the said Mr. Ogle, that they should be present. Then two Minutes of the said Meeting and Adjournment, of the same Tenor and Date being produced by the said Mr. Howard

and Mr. Charles, it was desired by the Plaintiffs Commissioners, that the Commissioners on each Side might sign the same, which was refused by the Defendant's Commissioners. Then it was desired by the Plaintiffs Commissioners that the said Mr. Howard and Mr. Charles might each of them sign and exchange the said Minutes. To which the said Mr. Howard made Answer, with some Warmth, that he would not sign, for he did not know but he might be called to England for it. And further saith, that a Quorum of the Commissioners, on each Side, met at Newcastle on the said 30th of October, in pursuance of their Adjournment, at the House of Robert Gordon, and the Articles of Agreement aforesaid being read, it was observed, by Samuel Ogle aforesaid, that the Charter for Pensilvania, and the Deeds of Feoffment for Newcastle being recited in the said Articles, he desired the said Charter and Deeds of Feoffment might be produced; To which it was answered by the Plaintiffs Commissioners, that so much of the said Charter and Deeds of Feoffment as was necessary for carrying the said Articles into Execution, being recited in the said Articles, there was no Need of the said Charter and Deeds themselves, upon which it was asked by the said Samuel Ogle, and the Deponent thinks by the said Michael Howard, whether any of the Plaintiffs Commissioners would give it under their Hand, for Law, that the Recital of one Deed, in another, was good Evidence to prove the Deed recited: To which it was answered by the Plaintiffs Commissioners, to the following Effect. That, in the present Case, they would do so; for, altho' it was generally true, that the Recital of one Deed, in another, was not a Proof of the recited Deed, yet, the present Articles of Agreement, being the joint Act of the contracting Parties, and they having taken upon them the Knowledge of the Charter and Deeds so recited, That same Recital was good Evidence to the said Commissioners, that there were such Charter and Deeds, and that they were truly recited, and that the said Charter and Deeds could not be got nigher than Philadelphia, which would occasion great Delay, that ought to be avoided at that late Season of the Year; but the Defendant's Commissioners insisting on a Sight of the said Charter and Deeds, one of the Plaintiffs Commissioners was dispatched to Philadelphia, who returning the next Day, the said Charter and Deeds were, then produced at a Meeting of the Commissioners, held at the same Place, and the recited Parts of the said Charter and Deeds of Feoffment being compared, with the Charter itself, and exemplified Copies of the said Deeds, they were found to agree. Then Copies of the said Charter and Deeds of Feoffment were demanded by the Defendant's Commissioners; to which it was

objected by the Plaintiffs Commissioners, that the Defendant's Commissioners themselves, having compared the Parts of the Charter and Deeds of Feoffment, recited in the said Articles, with the said Charter and Deeds, and being found to agree, there could be no Use of Copies of the said Charter and Deeds, especially seeing they were very long, but to spend Time, and delay the Business they had met about. And the said Defendant's Commissioners were then put in mind of what the said Samuel Ogle had said at Newtown in Maryland, That the Commissioners had nothing to do with the Articles, the Commission being their Authority and Direction: But this not being satisfactory to the Defendant's Commissioners, it was at last, agreed, that they should have Copies of the Descriptive Parts of the said Charter and Deeds of Feoffment, which they accordingly had, signed by some of the Commissioners for Pennsylvania; It was then offered by the said Samuel Ogle, that he observed there was no Direction in the said Commissions, for finding a Center, in order to run the said Circle about the Town of Newcastle, mentioned in their said Commissions. Whereupon it was alledged by the Plaintiffs Commissioners, That the Commissioners, being impowered and directed by their said Commissions to run the said Circle, They, therefore, had Power to do all that was necessary for the running of the same, and therefore, to fix the said Center. To this it was replied, by the said Samuel Ogle, to the following Effect, That he had consulted both Lawyers and Mathematicians, and they were of Opinion that no Circle could be run, without a Center, and that by their Commissions, they had no Power to fix one. It was then said by the Plaintiffs Commissioners, that in the Map, in the Margin of the said Articles, the Town of Newcastle was laid down, and a Central Point fixed, within the same Town, from which the Circle, described in the said Map, appeared to be drawn which according to the said Articles, ought to be a Direction to the said Commissioners; but, it being answered by the said Samuel Ogle, That the Town of Newcastle, being large, much depended upon fixing the said Center, for if it was placed at the extreme Part of the Town, it might injure the Lord Baltimore, and if fixed in some other Part it might injure the Plaintiffs, It was then urged again, by the Plaintiffs Commissioners, that the central Point laid down in the said Map for the middle of the said Town, was the best Direction the said Commissioners could have, and therefore the said Plaintiffs Commissioners moved that the Surveyors, attending might go and measure the said Town, which was objected to by the Defendant's Commissioners; and then it was proposed by the said Samuel Ogle, that the Commissioners should take a

Walk about and view the said Town; and the Commissioners on both Sides, accordingly then walked to several Parts of the said Town with Surveyors attending them: That upon some of the Plaintiffs Commissioners offering to shew the Defendant's Commissioners the Extent of the said Town, the said Samuel Ogle neglected and disregarded the said Offer: That, upon a Meeting of the Commissioners, on the next Day, the said Samuel Ogle, again said, that he, having consulted Lawyers and Mathematicians, who were of Opinion that they had no Power to fix the said Center, and he having little Skill in those things himself, he ought to have a Regard for their Opinions or to that Effect: and said, besides, That the said Town, he understood, was an oblong, and not round, and the Bounds also uncertain, Therefore he knew not how they could make such a Circle round the same Town; upon this it was offered, by the Plaintiffs Commissioners, to remove that objection, that they should fix the Center at the Court house, in the said Town, which was not one third of the breadth of the same Town from the River Side, and therefore (as the Plaintiffs Commissioners said) it would be much to the Advantage of the Lord Baltimore: To which the said Samuel Ogle answered, That they ought to be careful of the interest of the Plaintiffs, equally with that of the Lord Baltimore, and added, that some of the Plaintiffs Commissioners had said at a former Meeting, that the least Variation from the Articles would make void what they should do by Virtue of their Commissions; To this Allegation it was objected, by the Plaintiffs Commissioners, that no such Words, as the least Variation from the Articles, had been used; but only, that any Variation from the express Words of the Articles, and the Direction of the Commissions, might render void and ineffectual what they should do in pursuance of the same. But there being no express Directions, either in the said Articles or Commissions, for fixing the said Center, and the Circle being directed to be run, therefore, the said Plaintiffs Commissioners conceived that sufficient Power was given to the Commissioners to fix the said Center; and as the said Center, proposed, was for the Advantage of the Defendant, there could be no Apprehensions of his complaining, and the Commissioners on the Part of Pensilvania proposed that they would procure an Assurance from one of their Proprietors of his acquiescing in such Center, so to be fixed; but upon this, the said Mr. Ogle said, we may, thereby, injure some other People who have Freeholds bordering upon the Circle, where ever it should fall: To this it was said by the Plaintiffs Commissioners, That the Commissioners fixing a Center could injure such other Persons no more than if such Center was fixed by the

Plaintiffs and Defendant themselves, who nobody denied, had the Right of doing so; upon which Mr. Ogle said, let us wave the Center, for the present, and talk a little about the Circle. To which, it was answered by the Plaintiffs Commissioners, that it would be to no Purpose to talk about the Circle, till they had agreed upon the Center, since it was admitted that no Circle could be run without a Center; but Mr. Ogle proceeded to ask the Plaintiffs Commissioners what they understood were the Dimensions of the Circle, then proposed to be run? To which the Plaintiffs Commissioners answered, that they understood the Circle, mentioned in the said Articles and their Commission, to be a Circle of 12 Miles Distance from the Town of Newcastle. Whereupon Mr. Ogle said that the Circle which the Commissioners were enjoined to run, was the Circle mentioned in the Deeds of Feoffment of the Town of Newcastle, which Circle, was, as he conceived, a Circle whose Circumference was only 12 Miles, and much more was said by the Defendant's Commissioners to the same Purpose; but the Plaintiffs Commissioners insisting that the Articles of Agreement, being plain, would admit of no Construction, different from the express Words, which Words were (a Circle at the Distance of 12 English Statute Miles from th^e Town of Newcastle.) Upon this Mr. Ogle asked the Plaintiffs Commissioners, how they conceived a Circle of those Dimensions, could be run in the Woods? And said that for his Part, he thought it impracticable. To which the Plaintiffs Commissioners answered, that, if that was the Opinion of the Defendant's Commissioners, then they the Plaintiffs Commissioners understood them very well, that the said Articles were not to be carried into Execution at all; and much Time being spent in Debates upon this Subject, it was at last proposed by Governor Ogle, That as the Commissioners on each Side, differed so much in Opinion and the Lord Baltimore being, soon expected in his Province of Maryland, that they should adjourn, in order to have his Lordship's Directions for the fixing of a Center; but this was opposed by the Commissioners on the Part of Pensylvania, who said that the Season of the Year for running Lines in the Woods was far advanced, that they had brought their Artists with them, expecting to proceed upon the Work, as they had done at their first Meeting at Newtown, and that it was well known to every body, that after the 10th or 20th of December, the Weather was too severe, for any Persons to go and continue running Lines in the Woods, for any long Time as the Persons who were to do this Work would be obliged to do; and therefore an Adjournment would be very inconvenient; but the Commissioners of Maryland insisted, that they knew no more likely Way to forward the Work

then before them, than first to receive the Lord Baltimore's Directions for the finding a Center, which they conceived they had no Power to do themselves; upon this, the Plaintiffs Commissioners took some small Time to consider of the proposed Adjournment, and in few Hours, the Commissioners of each Side met again, and it was said by the Plaintiffs Commissioners that they could not agree to any Adjournment, till the Defendant's Commissioners had named the Day, and if it was a short Adjournment, probably that the Plaintiffs Commissioners would agree to it; and much being said upon this Subject, the Commissioners of Maryland, at last mentioned the first of February, which the Plaintiffs Commissioners desired time to consider of; and then, they observed to the Defendant's Commissioners, that as there had been no Minutes taken of the Proceedings that had passed amongst them, and that tho' the Business which they were upon, was of a publick Nature, yet Clerks had been refused to be introduced, and no Persons admitted to hear, or be privy to, any of their Debates, they again insisted upon having Clerks introduced, and Minutes taken of their Proceedings, which they conceived absolutely necessary, that it might appear they had met upon the Business which they were impowered to transact by virtue of their Commissions; but this was, again, absolutely refused by the Defendant's Commissioners, as unnecessary, saying that great Confusion and Trouble would arise by the Clerks differing in their manner of taking such Minutes, and Mr. Ogle likewise then said, that they would own before any Body, they had met on this Business; to which the Plaintiffs Commissioners replied, that there would be no Misunderstanding, or Differences of that kind, amongst the Clerks, as they would be present with, and under the Directions of the Commissioners; but not being able to obtain the Consent of the Defendant's Commissioners to have Clerks, or any other Person present at their Meetings, they took Time to consider of the Adjournment, till next Day; and, in the mean time, having observed amongst themselves, with great Concern, the Arts and Methods used by the Defendant's Commissioners to evade and delay the Execution of the said Articles, and their affecting so much Secrecy, at their Meetings, so as to admit no Persons to be present besides the Commissioners, it was resolved, amongst the Plaintiffs Commissioners, that a Paper should be drawn up (from the Minutes kept by the Plaintiffs Commissioners) of the several Transactions of the Commissioners from their first Meeting, to be read at the next Meeting of the Commissioners on both sides, and the same was drawn up, accordingly, and read to the Defendant's Commissioners the next Day; and at the same Time it was desired that

they would make their Objections, if they had any against the Truth of it; To which Mr. Ogle said, that the Plaintiffs Commissioners might keep what Minutes they pleased, but if he had had the drawing up of that Paper, he could have set the Arguments of the said Defendant's Commissioners in a fairer Light; and then, one of the Defendant's Commissioners produced a Paper, which was said to be some Minutes kept by them, and read the same, purporting that the Commissioners on both sides had met at Newcastle, in order to execute the Articles, or run the Circle, but, Difficultys arising, they had agreed to adjourn; but the Plaintiffs Commissioners objected to this as being very unsatisfactory, and far from containing what had passed between the Commissioners, and the Reasons of their Adjournment; Upon which Mr. Ogle pulled out a Paper, and after reading the same, said, Gentlemen, What do you think of that? Which Paper was to the Effect following, viz. That the Plaintiffs Commissioners, or some of them, had declared it for Law, that the Recital of the Charter for Pensilvania and the Deeds of Feoffment, in the Articles, tho' false, yet were conclusive to the Parties? To which it was answered by the Plaintiffs Commissioners, that no such Words had been used by them, or any of them; for that they could not suppose that the Parties to the said Articles, (who were so largely interested and concerned in the Consequence) would make any false Recitals therein, which must be so much to the Prejudice of one, or the other, of them; and then appealed to the others of the Maryland Commissioners, whether the Words used by the Plaintiffs Commissioners were not to the following purport, viz. That the Recitals of one Deed, in another, is not generally, any Evidence of the Deeds recited, but that, in the present Case, as the Articles of Agreement were the Act of both contracting Parties, we must presume that there were such Deeds, and that they were truly recited, and that the Commissioners are to be concluded by them; which the other Maryland Commissioners seeming to allow, the said Mr. Ogle put up the said Paper into his Pocket again, without saying any more; and then, in Confidence of Lord Baltimore's Honour, and in hopes that he would give Directions to his Commissioners to proceed in the Execution of the said Articles, the Plaintiffs Commissioners agreed to the Adjournment to the 1st of February following, at Newcastle Town aforesaid. That a Quorum of the Commissioners met at Newcastle, on the 1st of February 1732, and some of the Defendant's Commissioners being arrived in the said Town the Day before, the Plaintiffs Commissioners having set out early in the morning, arrived late at Night; that the said Samuel Ogle acquainted the Plaintiffs Commissioners with the great

care the Defendant's Commissioners had taken to come early, notwithstanding the great Distance, and the Rigour of the Season; but you, Gentlemen, (speaking to the Plaintiffs Commissioners) seem to be fatigued with coming 40 Miles only; and therefore let us adjourn to To morrow Morning; to which it was answered, by the Plaintiffs Commissioners, that, unless we meet now, with a better Disposition to do Business than formerly, a small Part of an Afternoon will be no great Loss. That when the Commissioners met the next Day, the said Samuel Ogle acquainted the Plaintiffs Commissioners, that they were now met to proceed upon Business, and the Thing that was before them was the Circle, about the Town of Newcastle, and that he would be glad to know what the Plaintiffs Commissioners thought of the Dimensions of that Circle, or Words to that Effect? To which it was answered by the Plaintiffs Commissioners, that the Defendant's Commissioners could not forget that the Reason of their former long Adjournment was that they the Maryland Commissioners according to their own Request, might have an Opportunity, upon their Lord's Arrival, to receive Directions for fixing a Center of the said Circle, and carrying the said Articles into Execution. To which the said Samuel Ogle replied, That Lord Baltimore had delegated his Power to his Commissioners to carry the said Articles into Execution, and therefore, he would not interfere; and thereupon, ensued long Debates, concerning the Dimensions of the Circle; the Defendant's Commissioners insisting that the Circle, intended to be run, was the Circle mentioned in the Deed of Feoffment for the Town of Newcastle, whose Diameter was something less than four Miles; and the Plaintiffs Commissioners insisted that the Circle to be run, was the Circle mentioned in the Articles of Agreement and the Commissions, of the said Commissioners, which was a Circle to be run at the Distance of 12 English Statute Miles from the Town of Newcastle aforesaid. That after many Debates upon that Subject, it was proposed by the Defendant's Commissioners, that the Commissioners on both sides, should take the Opinion of Mathematicians, concerning the Dimensions of the said Circle; to which it was said, by the Plaintiffs Commissioners, that the Words of the Articles and Commissions being express and plain, there could be no Use for the Judgment of Mathematicians upon the Subject; and as the said Samuel Ogle had formerly objected against any Variation, when the Subject of the Center was debated, even tho' there were no express Directions in that Case, it would be much more dangerous to depart from a plain and positive Description and Direction in the present Case; but the Defendant's Commissioners insisting, still, upon taking the Opinions

of Mathematicians, upon the Dimensions of the Circle, they were desired, by the Plaintiffs Commissioners to reduce their Question to writing, which they long refused to do; but at last stated the Question, concerning the Dimensions of the Circle, upon the Words of the Deed of Feoffment; and it being requested that some of the Defendant's Commissioners should sign the said Question, they repeatedly refused so to do; upon this, some of the Plaintiffs Commissioners considering that, as no Clerks had been introduced, nor any Persons admitted to be present at the said Debates and remembering that none of the Commissioners at Newtown would sign the Minute of Adjournment they therefore, did believe that all this was done with intent that, there should be no Evidence of what had passed among the Commissioners concerning the Execution of the said Articles; and the Plaintiffs Commissioners considering the Impropriety of their being made use of as Witnesses against their Fellow Commissioners for the Defendant, they, therefore, insisted that, at the Time they gave this Answer, to the Question stated by the Defendant's Commissioners, the Mathematicians should be present, to support their own opinions, if needful, which was long opposed by the Defendant's Commissioners, but the Plaintiffs Commissioners insisting on it, that no Answer should be given to the said Question, unless they might have the Mathematicians present, it was, at length agreed to, by the Defendant's Commissioners and it being late at Night, the Commissioners adjourned, some of them saying to ten, others eleven of the Clock the next Day. That the Commissioners of the Plaintiffs meeting afterwards, that Night, agreed to reduce to writing what they had to say in Answer to the said Question, a rough Draft was prepared, by one of the Clock next Morning. That the same Morning, being cold, and the Person employ'd to draw the said Answer being indisposed, it required some considerable Time for the Plaintiffs Commissioners to examine and approve of it, which being done, with all the Expedition they could, two Persons were employed to copy it, whilst the Deponent dictated to them, and this with a Design to read and deliver one Copy to the Defendant's Commissioners at the Meeting of the Commissioners in the Presence of the Mathematicians, and the other to be kept and Witnessed by the Mathematicians proposed to be present. That whilst the said Answer was copying, three of the Plaintiffs Commissioners were sent, to meet the Defendant's Commissioners in the Court-House, the usual place of Meeting; but in transcribing the rough Draft of the same Answer, there was occasion for a Sight of the said Articles of Agreement, and one John Georges was sent, for

them, to James Steel, one of the said three Commissioners who had the Custody of them: who left the Commissioners that had met, and brought the said Articles to the Commissioners that were preparing the said Copies; and the Drafts of the said Answer being near finished, the said James Steel staid until they should be finished, that the other two Commissioners might go, with him, on his Return; and just when the said Copies were finished and examined, and the two Commissioners and Mathematicians were ready to go to meet the Defendant's Commissioners, Isaac Norris and Samuel Preston came into the Room to this Deponent, and said, that the said Samuel Ogle had complain'd of his Waiting so long for a Quorum of the Plaintiffs Commissioners beyond the Hour of Adjournment, and had left the Place of Meeting; which occasioned great Concern in all the Plaintiffs Commissioners, and some of their Number were directed to wait on Governor Ogle, and the other Commissioners of the Defendant's and acquaint them, that the Non-Attendance of the Plaintiffs said Commissioners at the precise Hour, did not proceed from any want of respect to the Defendant's Commissioners, or from any unwillingness to attend at the Hour appointed, but meerly from an Accident, and to request the said Defendant's Commissioners to resort to the Court-House their usual Place of Meeting, and the Plaintiffs Commissioners would gladly wait on them. That the Person, who was directed to wait on the said Commissioners after Departure, returned and said that he had acquainted the said Governor Ogle accordingly, and that he replied he must consider of it. That this Deponent has heard and believes, that all the Commissioners on both sides (except this Deponent who was indisposed) dined together on that Day. That the Defendant's Commissioners after Dinner repaired to the House in the said Town where Governor Ogle Lodged. That the Plaintiffs Commissioners meeting together, agreed to wait upon the Defendant's Commissioners at Mr. Ogle's Lodgings, to excuse their Non Attendance in the Forenoon, at the Hour appointed, and to request them to meet the Plaintiffs Commissioners at the Court-House that Afternoon, and four of the Plaintiffs Commissioners went accordingly, and the Deponent followed, as soon as he could get into his Chaise; That, upon the Deponent's coming to the said Mr. Ogle's Lodgings, where the said Mr. Ogle, Mr. Charles Calvert, and Mr. Edmund Jennings, three of the Defendant's Commissioners, were in company with Isaac Norris, Samuel Preston, James Steel, and Robert Charles, four of the Plaintiffs Commissioners, and the said John Georges, the said Mr. Edmund Jennings, upon the Deponent's coming in, left the Room, and the said Mr. Ogle said

he was very sorry to see this Deponent so lame, and asked him to sit down; that the Deponent expressed his Concern that his Indisposition had given any Disappointment to the Meeting of the Commissioners that Morning; to which the said Mr. Ogle replied, That he had been very unwilling to give this Deponent any uneasiness, and had offered to come to this Deponent's Lodging, which the other of the Plaintiffs Commissioners had declined. That then, the Deponent said, that the considering and framing an Answer to the Question put by the Defendant's Commissioners the Night before, with this Deponent's Indisposition, and the Lameness of one of the Mathematicians, had prevented the Plaintiffs Commissioners Attendance at the Time appointed, but that they had provided an Answer, such as it was, to their Question, which he might see, if he would, and thereupon, this Deponent received from the Hand of the said John Georges, one fair Copy of the said Answer, signed by five of the Plaintiffs Commissioners, and delivered the same to the said Mr. Ogle, who looking upon the Beginning and End of it, offered to return it to the Deponent, who said that that was designed for him, and the Plaintiffs Commissioners had another of the same. Whereupon, the said Mr. Ogle laid the same down upon a Chair, by him. That then the Deponent proceeded to acquaint the said Mr. Ogle, and Mr. Calvert (the said Jennings having left the Room, as this Deponent verily believes, that there might not be a Quorum of the Defendant's Commissioners present with the Plaintiffs Commissioners) with the Sentiments and Desires of the Pensilvania Commissioners, and that they believed themselves hardly used in having an Attempt made to break off the Meetings of the Commissioners, because the Plaintiffs Commissioners had delayed meeting an Hour, or an Hour and an half, beyond the Time adjourned to. That the Plaintiffs Commissioners had waited as long for the Defendant's Commissioners, the Day before, who appeared to have nothing to do, but to walk about in the Room, and that, without the least complaining, and therefore they were in hopes that that might excuse their Absence that Morning and hoped that the Defendant's Commissioners would now meet them, to proceed upon the Business before them; to which the said Mr. Ogle replied, That, if they had got any Advantage to the Lord Baltimore by the Failure of the Plaintiffs Commissioners, he could not answer to give it up. That the Lord Baltimore might do what he would, but he questioned, whether he the said Samuel Ogle had it in his Power to forego that Advantage, or Words to that Effect. Upon which, the Deponent said, that he was well assured that the same was no such Failure in the Pensilvania Commissioners, by which any Forfeiture could

arise to the Lord Baltimore, and that in the Execution of Commissions, wherein more Form and Strictness were required than in this, the Failure of an Hour or two, if there was an offer to meet within the Day, had not been judged such a Fault as to determine the Commission; and that he this Deponent was sure the Defendant's Commissioners would not rely on the said Failure, and again jointly with the other of the Plaintiffs Commissioners invited the said Governor Ogle and the said Mr. Calvert to meet the Plaintiffs Commissioners with the rest of the Defendant's Commissioners, at the Court-House aforesaid, when the Plaintiffs Commissioners would be ready to wait for them. But Mr. Ogle said there is not a Quorum of our Commissioners here; that he was no Lawyer, and was not used to speak upon such Points, and continued in his former Opinion, that if his Lordship had gained any Advantage by the Plaintiffs Commissioners Default, he could not answer it to him to give it up, or Words to that Effect; upon this Deponent said, that, considering the former Conduct of the Defendant's Commissioners, it was no surprize to him to find them so ready to break off the Execution of the Articles, upon any pretence, how small soever, and thereupon left the Room with the other Pensilvania Commissioners, who going together to their own Lodgings, agreed that Notice should be given to the Maryland Commissioners, to meet them at the usual Place at six o'Clock that Evening, which this Deponent had heard and verily believes were served upon a Quorum of the Defendant's Commissioners, but tho' the Plaintiffs Commissioners did accordingly attend, yet, none of the Defendants' Commissioners met them; and thereupon the Plaintiffs Commissioners caused other Notices to be served, upon a Quorum of the Defendant's Commissioners (as this Deponent has heard and believes) to meet the Plaintiffs Commissioners on the Monday Morning following, and the Plaintiffs Commissioners accordingly attended, on the said Monday Morning, but none of the said Defendant's Commissioners met them, they being set out from Newcastle aforesaid the Day before, on their Journey back to Maryland. And the Deponent further saith that, soon after this, the said Governor Gordon laid before the Pensilvania Commissioners, a Letter which he had received from the Lord Baltimore, complaining of the Conduct of the Pensilvania Commissioners, and therein (reserving to himself any Advantage he might have gained by this Failure) gave them Notice to meet his Commissioners at Joppa in Maryland, on the 7th of May then next following; and thereupon the Pensilvania Commissioners upon perusing the said Letter, being of Opinion that the Lord Baltimore by the said Articles or Agreement had no power to give such Notice,

immediately dispatched a Messenger, with a Notice to his Commissioners, dated 28th March 1733, to meet them at the Town of Newcastle on 16th April then next, in Order to proceed upon the Execution of the said Articles, which Notice was served upon 5 or 6 of the Defendant's Commissioners, as this Deponent verily believes. And the Deponent saith that, upon the Return of the said Messenger the Pensilvania Commissioners received Notice from the Maryland Commissioners, to meet them at Joppa aforesaid on the said 7th of May; that a Quorum of the Pensilvania Commissioners attended at Newcastle, on the said 16th Day of April, in pursuance of their Notice given to the Defendant's Commissioners, but the Defendant's Commissioners did not meet them. And the Deponent further saith that, afterwards, five of the Plaintiffs Commissioners went, and met a Quorum of the Defendant's Commissioners at Joppa aforesaid, on the said 7th of May; that the Commissioners being met and Mr. Ogle taking Notice there was a Gentleman in the Room besides the Commissioners, Mr. Jennings said, perhaps he is a Commissioner; to which the Deponent made Answer to the following Effect, That the said Person was not a Commissioner, but a Gentleman of Worth, who had accompanied the Plaintiffs Commissioners down thither: That the Business they were met about was of a publick Nature, and that, as the Conduct of the Plaintiffs Commissioners at Newcastle, had been much misrepresented, and they had been refused Clerks, or any Person to be present at their Meetings, they insisted that that Gentleman should continue in the Room; to which Governor Olge replied, that he had said formerly, that Clerks were unnecessary, and was of the same Opinion still, but had not refused to admit other Persons to be present at their Meetings: Upon which, he was put in mind by the Pensilvania Commissioners of his Conduct at Newtown, where he declined exchanging the Minutes of Adjournment, till David French and James Hamilton, who were introduced as Witnesses, had left the Room, as herein before set forth and then the said Mr. Ogle said, if this Gentleman stays in the Room, we desire we may have one too: to which it was answered by the Pensilvania Commissioners, With all our hearts, twenty if you please: Whereupon one John Beale, a Clerk of some Court in Maryland was called in by the Defendant's Commissioners. And then the said Mr. Ogle beginning to speak about the Opinion of the Mathematicians, concerning the Circle to be run about the Town of Newcastle, the Commissioners of Pensilvania recounted the former Conduct of the Defendant's Commissioners and how they had disregarded their last Notice to meet at Newcastle the said 16th of April, and the several Notices given them

in Newcastle, in the Month of February to meet at the Court-House in the said Town, and especially when Mr. Jennings, being in Company with two of the Maryland Commissioners and four of the Pensilvania Commissioners, left the Room with intent that there might not be a Quorum of the Maryland Commissioners present, with the Pensilvania Commissioners: upon which the said Mr. Jennings then interrupted the Pensilvania Commissioners, and said he own'd he had done so, and that in the same Circumstance, he would do so again: and then it was said by the Pensilvania Commissioners, that Misunderstanding had formerly arisen about what passed at their several Meetings, they therefore now insisted that the Defendant's Commissioners should reduce into Writing any Questions, Proposals or Arguments they had to offer, and to sign them, and that they the said Pensilvania Commissioners would do the like, and thereupon several Papers were exchanged between the Plaintiffs and Defendant's Commissioners, concerning the Dimensions of the Circle directed to be run about the Town of Newcastle pursuant to the said Articles of Agreement, and after much Time spent this way, it was proposed by the Maryland Commissioners, that they should immediately adjourn to Cape Hinlopen, to which the Pensilvania Commissioners agreed, saying they would set out the next Morning, and desired that a Minute might be made to that purpose; but then the said Mr. Ogle said, that by immediately he did not mean to go so soon, but that they would be ready to meet the Plaintiffs Commissioners there in a Fortnight: To this the Plaintiffs Commissioners said, they could not but think themselves very hardly used in being brought upwards of 100 Miles, into a Place where they could not be provided with Necessaries for their support, merely to be told that they must meet a Fortnight after, at another Place, which was above 100 Miles further; nor did they think the said Usage better in the Defendant's Commissioners proposing an immediate Adjournment to Cape Hinlopen, and then declining to stand to it, which the Plaintiffs Commissioners believed was proposed only in Expectation that the Plaintiffs Commissioners would refuse to agree to it. And the Deponent saith that he does likewise believe, that the Defendant's Commissioners so appointing the said Meeting at Joppa, was only in hopes that the Plaintiffs Commissioners would not meet them there, and thereby the Defendant would gain some Advantage: and after many Debates concerning the further Adjournment, and the Defendant's Commissioners alledging that they were obliged to wait upon the Lord Baltimore, who was on his Way to make a Visit to the Governor of New York, then at Burlington in New Jersey, and therefore

they must adjourn, a Minute was drawn up, assigning for Cause of their Adjournment that the Defendant's Commissioners were obliged to wait upon the Lord Baltimore; but it was objected to by the Defendant's Commissioners, as unnecessary to have the Reason of their Adjournment assigned in the Minute, yet, it was insisted upon by the Plaintiffs Commissioners, that as that was assigned by the Defendant's Commissioners as the true reason of their desiring an Adjournment, it ought to be inserted in the Minute. And the only Reason the Plaintiffs Commissioners could find why the Defendant's Commissioners should oppose it, was, lest it should appear they had sent for the Plaintiffs Commissioners only to tell them that they met, to adjourn from Joppa, to attend their Lord; That under this Difference, the Commissioners on each side continued together till Eleven of the Clock at Night, and the Plaintiffs Commissioners observing that the Defendant's Commissioners must wait upon their Lord Proprietor, they, at length, agreed to leave the Reason aforesaid out of the said Minute, and then the Minute was prepared for an Adjournment to Philadelphia, and was signed the next Morning; That Quorums of the Commissioners, on each side, did afterwards meet at Philadelphia aforesaid on the 26th Day of May next following, when it was represented to the Defendant's Commissioners, that the Lord Baltimore being about to depart very soon after for England, and some of the Defendant's Commissioners intending to accompany his Lordship to Virginia, from whence he was to take his Departure, and that the said Mr. Ogle, on resuming the Government of Maryland was obliged to renew his Security, which was to be executed before the Governor of Virginia, which required the said Mr. Ogle's personal Attendance, upon those Considerations, joined to that of the Unfitness of the Season for running Lines in the Woods, an Adjournment to the 3d of September following, at Newcastle Town aforesaid, was agreed to and drawn up, and signed by the Commissioners on both sides; That Quorums of the Plaintiffs and Defendant's Commissioners met at Newcastle Town, on the said 3d Day of September, and continued together three Days, during which Time several Papers were exchanged between them, concerning the Dimensions of the said Circle, the Plaintiffs Commissioners insisting that the said Circle should be drawn at the Distance of 12 Miles from the Town of Newcastle, and the Defendant's Commissioners persisting in their former declared Opinion, that the said Circle should only be a Circle of 12 Miles Circumference: They therefore proposed to the Plaintiffs Commissioners to adjourn for further Consideration, until the 14th of November then next, and a Minute thereof was accordingly drawn up and signed; On which Day a Quorum

of the Commissioners, on each side, met at Newcastle Town aforesaid, and continued together until the 24th Day of the same Month, during which time several Papers were exchanged between them, principally concerning the Dimensions of the said Circle; and the Commissioners on each side persisting in their former Opinions concerning the same, it was said by the Defendant's Commissioners, that, under this Difference of Opinion or Judgment, they must either continue at Newcastle aforesaid until the 25th of December then next, or must depart from thence without further Adjournment, and a Minute was accordingly drawn up, declaring the Sentiments of the Commissioners on each side, and the Reasons of their Departure without further Adjournment; Therefore this Deponent saith, that the groundless Objections, which were raised by the Defendant's Commissioners against the Validity of the Plaintiffs Commission to their Commissioners, their affecting Privacy, and refusing to admit Clerks, or to sign and exchange Minutes of the Proceedings of the Commissioners, their long Adjournment, without any good Reasons for the same; their endeavouring to take the Advantage of a small Failure in the Plaintiffs Commissioners for Non-attendance; their disregarding the repeated Notices and Requests, made to them by the Plaintiffs Commissioners at Newcastle on the 3d of February, and the Notices given to them to meet upon the 16th of April; together with their setting up, and insisting upon, a Circle of Dimensions, different from that which was expressly directed by the said Articles of Agreement, and the several other Matters herein before declared by this Deponent, are the apparent Causes and the true Reasons, why the Deponent believes the Defendant's Commissioners never intended to carry the said Articles of Agreement into Execution.

21ST BRANCH, That the Circle, and the Distance of it, were well known at the Time of the Agreement, That Lord Baltimore's own Map had many particular Marks and Lines relating to that very Circle; That he had above 8 Years before that Time the largest Draft of the Peninsula, that had ever been seen, with several East and West Lines markt for Division thereon; That the Plaintiffs had never been in America, to gain any Knowledge on their Parts; and also to prove an old Map of the Town of Newcastle.

Ferdinando John Paris, [Lib. A. fol. 195. Int. 18. fol. 268.]

Says that the Circle, round Newcastle, and the Distance that such Circle was to be from its Centre, were, at sundry of the

Meetings, had in this Deponent's Presence, between all (or some) of the Plaintiffs and the Defendant, in order to the said Agreement, spoken of and mentioned, many times; and were by every one of them, who spoke of the same, constantly spoke of, and treated as a Circle to be drawn at the Distance of 12 Miles from the Centre, and at no other Distance whatever; but that a Question did afterwards arise, whether such 12 Miles should be Geographical Miles, or English statute Miles; and the Deponent hath good reason to remember, that neither the Defendant, nor the Plaintiffs, did, at any one of the Meetings between them in order to the said Agreement, which the Deponent was present at (and he believes he was present at all such Meetings) ever mention that the said Circle should be at four Miles, or at two Miles Distance from Newcastle, or anything of that sort, but, on the contrary, the Defendant the Lord Baltimore, himself, spoke of the said Circle at such Meetings, as at the Distance of 12 Miles from its Center; and more particularly, upon the Occasion of his insisting that the Head or North Bounds of his Province of Maryland, should go up so far North, as to be within 15 Miles South of the Latitude of Philadelphia, the Deponent well remembers that the Plaintiffs (or such of them as were then present) and the Defendant appeared to be all at a loss, to judge, upon their Maps (then produced on each side) whereabouts such fifteen Miles would fall upon the Map, there not being any Scale of Miles either upon the said Lord Baltimore's, or upon the Plaintiffs written Map; On which Occasion, the Lord Baltimore, with a Pair of Compasses, measured one of the said written Maps, and took his Scale or Measure (as for 12 Miles) from the Distance which was there laid down between Newcastle and the Circle, or Part of a Circle there drawn; and from such Measure, set off a larger Distance, as for 15 Miles, South of Philadelphia, at which Distance, he had insisted, his Head or Northern Boundary should be, and markt one of the said written Maps accordingly; and which Uncertainty as to the exact Place, where 15 Miles South of Philadelphia would fall, or of the Name of any such Place, occasioned the Deponent, on preparing the 7th Article, in the Draft of the said Articles of Agreement, to express the same to some such Effect as is therein mentioned. And the Deponent is the rather certain, that during the said several Meetings in order to the said Treaty, which the Deponent was present at, the said Circle was never once mentioned, by any Person, as a Circle at two Miles Distance from Newcastle only, for that, along time after the Sealing and Delivery of the said Articles of Agreement, when the Deponent first heard that the said Articles of Agreement had not been carried into Execution in America, but,

that a Contest had arose there between the Commissioners on each side, whether the Circle should be two Miles distant, or 12 Miles distant, from Newcastle, this Deponent was under a real Surprise thereat, and had recourse to the Draft of the said Articles, and to one engrost Part of the same, then in this Deponent's Custody, fearing that some Mistake of the Clerk, in copying or engrossing, or by expressing the Distance in Figures only, and not in Words at length, must have given Room for making such a Question as that; And this Deponent, finding no Mistake either in the Draft or in that engrost Part of the Articles which was in this Deponent's Custody, could not (in a great length of time after he first heard of such contest between the Commissioners) conceive upon what Foundation such a Question could be raised.

The same. [Int. 19. fol. 276.]

Says that the Western Part of the Circle, as it was drawn out upon the Lord Baltimore's and upon the Plaintiffs written Maps, which were so produced as aforesaid, did extend Westwards, very near to, or even to touch Elk River, and so the same was graven and printed off, but whether a Circle to be drawn only at 12 Statute Miles Distance from Newcastle, will really extend so far Westwards, doth not know; And saith that, from all this Deponent knows, or hath seen, he doth believe that the Defendant had the fullest Information relating to the said Circle, and the Dimensions thereof: for that the Deponent hath, before, and since, the entering into the said Agreement between the Parties to this Cause, seen many Drafts and Plans, where the Circle about Newcastle was laid down, but as to the Extent and Distance of such Circle from Newcastle, there were either on the Back-side of the written Map so produced and markt by the Lord Baltimore as aforesaid, or on some Paper, which was then stitched or pinned, or some how affixt to it, such and so many particular Lines and Marks, and Notes and Descriptions, relating to the said Circle, as the Deponent, never before, or since, saw, in any other Map or Paper whatever, either belonging to the Plaintiffs, or any other Person; from whence, as well as from the Expressions in the Draft of the said Articles of Agreement, and from the said Mr. Senex's written Opinion upon the same, the Deponent apprehends and believes, none of the Parties to this Cause, and much less the Defendant, were at all ignorant of, or under any Uncertainty, then about the Dimensions of the said Circle, but were well informed of the same, that it was to be at twelve Miles Distance from Newcastle, besides which, in the Draft of the said Articles of Agreement there was recited the Charter from the Crown,

of Pensilvania, and the two Feoffments from the Duke of York, for Newcastle, and the South Tract, in the very descriptive Words, as this Deponent believes (as to the Limits of the Territory granted) of the said Charter and Feoffments, or very nearly so.

The Defendant at fol 362. denies he ever meant or intended that the Circle, should be a Circle, whose Semi-Diameter should be 12 Miles, and insists, at fol. 360. that if the Articles should be decreed to be carried into Execution, yet that the Circle was thereby agreed, and ought to be a Circle, whose Semi-Diameter is two Miles.

Now we'll first consider the Grants by themselves, before we come to the Agreement, and what are they? The Charter of Pensilvania begins, clearly and without any Possibility of Doubt, by a Circle to be drawn Northerly and Westerly 12 Miles distant Northwards from Newcastle Town; Again, The Duke of York's Feoffment of the lowest of the two SouthTracts begins, as clearly and expressly, at the Distance of 12 Miles Southwards from Newcastle Town. And what does the Feoffment of Newcastle, which was the middle Tract between those two Grants? Why, it grants the Town of Newcastle, and all the Lands within the Compass or Circle of 12 Miles about the Town. Can any Man in his Senses, seriously imagine that this contains the least Matter of Doubt? He got two Persons to sign a Paper, as their pretended Opinion, that the Circle in the Feoffment of Newcastle (not the Circle mentioned in the Agreement) should be only two Miles distant, but though they signed it, and are examined as Witnesses to swear that they signed it, they beg our Pardons, they won't say a single Word that they even thought that to be a true Opinion as to the Extent of that Circle in the Feoffment.

But the Defendant would chuse rather to debate upon the Feoffment, which he imagines is less clear than the others. Now we are not obliged to that, but if we were, it would not at all help him. For that particular Feoffment itself is exceedingly clear in our favour, as already observed; besides which, that very Feoffment, in two several Places calls it expressly 12 Miles of Land; which absolutely destroys his Construction of the Circle, because a Circle, whose Circumferene or Periphery is but 12 Miles, does not contain 12 Miles of Land, no not even if that Circle was compleat; whereas ours is not Half of a Circle of Land, as Newcastle lies on the great River side, and does not contain any thing near Half 12 Miles of Land.

Another thing which shews the distance of the Newcastle Circle is, Sir John Werden's Request in behalf of the Duke of York in 1680, at first, that Mr. Penn should be bounded 20 or 30 Miles North of Newcastle, which at last was brought to be but 12 Miles North, and so described in the Patent of Pensilvania.

But when we come to the Agreement, surely we are beyond all Imagination of Doubt, both that it was agreed, and was intended to be, 12 Miles distant from Newcastle.

For 1. The Draft of the Agreement, 9 Months under Consideration, says so expressly.

2. Mr. Senex's written Opinion on that Agreement says so expressly. And that the Town of Newcastle was to be taken as a Centre.

3. My Lord's own Proposals, under his own Hands, describes it, in two several Places, in the very first Article of his Proposals, a Circle of 12 Miles Distance from Newcastle, and in the third Article the Circle of 12 Miles from Newcastle.

4. His Articles, so deliberately settled, and afterwards executed under his Hand and Seal, direct it to be drawn at the Distance of 12 Miles from the Town of Newcastle, most expressly.

And I would beg of my Lord, or his most ingenious Council, to explain my Lord's own Proposal any otherwise. Nor is this all.

5. Paris swears that my Lord, during the Treaty, not only spoke of it as at 12 Miles Distance, but took off the Measure, as for 12 Miles, from the Circle in the Map, in order to measure off and satisfy his Curiosity where the 15 Miles South of Philadelphia would fall upon the Map.

6. The Affair of the Circle was most particularly under Consideration during the Treaty, and was not a Matter that past *sub silentio*, for, with regard to the Miles at which that Circle should be distant from Newcastle, you'll please to observe there were only two Distances of Miles mentioned in the whole Articles; the one was the 12 Miles Distance for this Circle, the other was the 15 Miles South of Philadelphia; and it is in that Sheet of the Draft where both these Distances are mentioned, that Mr. Sharpe's general Remark of his own Hand-writing is placed, that the Miles, throughout, should be exprest English Statute Miles. So that the Circle was thereby the more particularly under Contemplation, and the Distance which it was to be at from Newcastle, whether 12 Geographical Minutes, or 12 English Statute Miles.

Yet, this Defendant is so extremely hardy as to say, he never meant or intended 12 Miles distant, but that the Circle agreed upon, is only two Miles distant.

The most favourable thing that can be said, and that's extremely bad, is, that Mr. Hamllton, who drew this Answer for my Lord, had not sufficient Time or Instructions, and that my Lord swore to what he drew, and never read it over; for otherwise, some of his Perjuries are so gross (and so foolish too) that my Lord could not possibly have put in such an Answer, he many times flatly contradicting his own self in Facts, besides the many other Places in which he is contradicted by his own Witnesses.

James Logan, aged 66. [Lib. B. fol. 76. Int. 36. fol. 218.]

That subsequent to an Agreement made between the Lord Baltimore and Hannah Penn, in February 1723, to wit, in May 1724, there was a Meeting appointed and held between the said Lord Baltimore as Proprietor of Maryland, and the Proprietors of Pensilvania, at the George and Vulture Tavern in London, at which were present on the Lord Baltimore's side, the said Lord Baltimore, John Hide of London Merchant, and his Son, and on the part of the Proprietors of Pensilvania, two of the Plaintiffs with Springett Penn, who claimed a Right in the same Province, and Joshua Gee and Henry Goldney, two of the aforesaid Trustees of the said Province, Simon Clement, and the Affirmant; and upon opening the Conference, the Lord Baltimore produced, and kept lying on the Table before him, a Draft on a Sheet of Paper, which appeared to the Affirmant, who eyed it very carefully, to be the fairest and largest Manuscript Draft of Chesopeak Bay, and also Delaware, with the Peninsula lying between them, and the adjacent Parts, that ever the Affirmant had seen; on which Draft there were drawn, at least two East and West Lines, but to the best of the Affirmant's Memory, not less than three, which seemed to the Affirmant as intended to have been drawn with a purpose to express the several Divisions that had been thought of for a Partition Line between the two Provinces aforesaid; but by the said John Hide and his Son sitting between the Affirmant and the said Lord Baltimore, the Affirmant was not near enough to observe, so precisely the Places by which the said Division-Lines passed, as he would otherwise have done, but, in the Lord Baltimore's Discourse, he seemed to the Affirmant to be well acquainted with the Situation of the principal Parts then discoursed of, which were the Provinces of Pensilvania and Maryland, and particularly with the Situation of the three lower Counties, which the Affirmant well remembers, because the said Lord

Baltimore then proposed entirely to release all his Claim to the said Counties, and argued that, as the said Counties were by his Letters Patent within the Description of the said Province, and the Crown made some Claim to them, it could not but strengthen the Title of the Proprietors of Pensilvania to the same Counties, or Words to that effect; but having spent several Hours together, the Company parted, for that time, and the Affirmant having left Egland in the same Month, can't say what was further done therein.

The same, [Int. 60. fol. 157.]

Saith that he having come into Pensilvania in the same Ship with the Father and Mother of the Plaintiffs in the Year 1699, lived in their Family at the Time that John Penn was born, which was in January in the same Year, at Philadelphia, in this Province, and the Affirmant afterwards accompanied the Father and Mother of the Complainers, with the said John an Infant under two years old, on their Way toward England, as far as the Capes of Delaware, and although the Affirmant was intimately acquainted with the Affairs of the said Family, he never heard, and firmly believes, that the said John Penn never was in Pensilvania or any other Part of America from that Time, until after the Month of May 1732; and that the Plaintiffs Thomas and Richard Penn were born in England; and never heard, and verily believes that the said Thomas Penn never was in America, until after May in the Year 1732; and that Richard Penn has never been in America to this Day.

Letitia Aubrey, aged 60. [Lib. A. fol. 134. Int. 31. fol. 138.]

That the Plaintiffs are her Half Brothers, and she has known them from their respective Births, and saith the Plaintiff John Penn was born at Philadelphia in the Province of Pensilvania in America, which she can depose, because she remembers the said Plaintiffs Birth there, where the Affirmant's said Father and Family then resided; and in or about the Year 1701. her said Father and his Family left Pensilvania aforesaid, and came to England, and brought the Affirmant, and the said Plaintiff John, along with them, and the said Plaintiff was then about a Year and half, or two Years of Age, and no more, and the Affirmant is certain that, between the Time of the said Plaintiff's coming from Pensilvania as aforesaid, and the Month of May 1732, he the said Plaintiff never was in Pensilvania, or in any other Part of America; And saith the said Plaintiffs Thomas and Richard Penn were born at Bristol in England, after her said Father's Return from Pensilvania aforesaid; And the Affirmant is certain, that the said Plaintiffs Thomas and Richard, or either of them, were not at any time in America,

before the said Month of May 1732, and the Affirmant is enabled to depose as aforesaid, because of her Nearness of Relation to the said Plaintiffs, and the many Opportunities she had of seeing and hearing from them, and must needs have known, if either of them had gone to America, before the said Month of May 1732, and it was in that Month (as she remembers) that the Agreement, or Writings between them and the Lord Baltimore, were executed, at which this Affirmant was present, and remembers the Plaintiff Thomas went to Pensilvania soon afterwards, and upon that Occasion, as she believes, and that it was a considerable time after that, before the Plaintiff John went there; but the Plaintiff Richard has not been there at all.

Thomas Penn, [Lib. A. fol. 5. Int. 31. fol. 9.] a servant in the family, John Page [Lib. A. fol. 174. Int. 31. fol. 177.]

Both confirm the foregoing Account, that the Plaintiffs were never in America till after the Agreement in Question was executed.

Andrew Hamilton, aged 64, [Lib. C. Fol. 775 Int. 117. Fol. 874. Further on at Fol. 879.]

Says that at a Meeting of the Commissioners on both sides, on 31 October 1732 at Newcastle, a Dispute arising, between the Commissioners, about fixing a Center for the Circle about the Town of Newcastle, and the Maryland Commissioners then proposing that the Commissioners should walk and view the Town, they did so, with some of the principle Inhabitants, amongst whom was one John Hoare, then the Surveyor of Newcastle County, and since deceased; which said John Hoare then produced and delivered to the Pensilvania Commissioners, in order to assist and direct them in finding and fixing such Center, the Map or Plan endorst NEWCASTLE, which Map the said Hoare then told this Deponent, and the rest of the said Commissioners, was an old Map or Plan of the Town of Newcastle, which he had found amongst the Papers in, and belonging to, the said Office of Surveyor of Newcastle County, when he the said Hoare was first appointed and put into that Office. And says he has good reason to believe that the said Map or Plan was drawn or made by one Arnoldus de la Grange, who as he has been informed and believes, was an ancient considerable Inhabitant of the Town of Newcastle, at and before the Grant thereof to Mr. Penn, This Deponent having very frequently had in his Custody, and seen, several antient Deeds and Publick Writings, bearing Date before the said Grant, and also the Attornment of the Tenants of Newcastle to Mr. Penn on his first Arrival there; to which several Deeds, Instruments, and Writings, was subscribed or wrote the Name

Arnoldus de la Grange, which this Deponent was then credibly informed and believes, was the Hand Writing of the said Arnoldus de la Grange; and thereby this Deponent became acquainted with his Character and Manner of Hand Writing, and verily believes all the Names (except a few) which are comprised and set down in the said Map or Plan, are the proper Hand Writing of the said Arnoldus de la Grange.

22D BRANCH. That the Defendant was not deceived in the Plaintiffs Title, which he very well knew, long before the Agreement.

Ferd. John Paris. [Lab. A. fol. 195. Int. 21. fol. 284.]

That he cannot take upon him to say positively, how far the Defendant the Lord Baltimore, at the Time of entring into the said Agreement with the Plaintiffs, was acquainted with the Plaintiffs Title, either to the Province of Pensilvania, or to the 3 lower Counties of Newcastle, Kent and Sussex; but from the Authentick Records, and other old original Papers, which this Deponent hath seen of what past in the Years 1680, 1683, 1684, 1685, 1708, 1709 1716, 1717, and 1725, relating to the said Province and Counties, some of which matters the Defendant himself was (to this Deponent's Knowledge) a Party to, the Deponent doth most assuredly believe, that the Defendant was acquainted with the Title under which the Plaintiffs claimed the said Province and Counties at the Time of, and long before the entring into the said Treaty; nor did the Deponent ever hear, that Proprietary William Penn's Title to the said Province of Pensilvania had been, by any Person, or in any Sort, objected to, as imperfect, or any way insufficient; and, as the Deponent always understood the said Agreement between the Parties to this Cause, the Substance thereof appeared to the Deponent to be, that, in Consideration of Lord Baltimore's releasing to the Plaintiffs his Claim to the 3 lower Counties, the Plaintiffs should release to him, a Part of the Province of Pensilvania; In which Light Deponent conceived, that the Plaintiffs Title to the said Province of Pensilvania was the Matter that was essential and material to the Defendant.

The Defendant in his own Answer, Fol. 206. Says he always lookt upon the three lower Counties to be his Right, and to be appertaining to his Province, and he never acknowledged or believed that the Plaintiffs had any Right or Title thereto whatsoever. How then could he be deceived in the Plaintiffs Title to them, if he never believ'd they had any?

Besides, it's he conveys his Pretensions to the lower Counties to them, not they to him.

What they convey to him, is out of their Province of Pennsylvania, which Province is exprest, in their Charter, to commence from the Beginning of the 40th Degree.

Moreover neither Party covenants that he has any Title to convey what either of them releases, but they were mutually to release their Pretensions, whatever they were, good, bad, or indifferent, to the other.

23D BRANCH. Of the East and West Bounds of the Peninsula and where the Bay of Delaware ends, viz. at Bombays-Hook, about 30 Miles below the Town of Newcastle.

Samuel Preston, aged 75, [Lib. B. Fol. 312. Int. 5. Fol. 315.]

Says the said Peninsula is bounded, on the Eastward from the Cape of Virginia to the Cape at the Mouth of Delaware Bay called Cape Enlopen or Inlopen, by the Ocean. From thence, by the said Bay of Delaware, which is generally believed to extend as far as Bombay-Hook on the said Bay. And, from thence by the River of Delaware.

James Logan, aged 66, [Lib. B. Fol. 76. Int. 5. Fol. 84.]

That the said Peninsula is bounded, on the Eastward, as far as the South Cape of Delaware, by the Atlantick Ocean; From thence, more Northerly, by Delaware Bay and River. He cannot precisely determine where the Bay of Delaware ends, and the River begins. Has heard, from Navigators, that the Bay ends, and the River begins, at Bombay Hook, because, upon arriving there, they thought the Danger of their Voyage over, and for that they had good Anchorage, and safe riding under an Island there, but his own Opinion has, always, been that the Bay reached to the Bite, between the Mouths of Apoquimink and Red Lion Creeks.

Thomas Noxon, aged 40, [Lib. C. Fol. 488. Int. 5. Fol. 491.]

The said Peninsula is bounded, to the Eastward, from the most Southern Part thereof to the Mouth of Delaware Bay, near Lewes Town, by the Ocean; From the said Mouth of Delaware Bay to Bomties Hook, now commonly called Bombay Hook, by the Bay of Delaware; and, from the said Bomties Hook, as far as the said Peninsula extends Northwards, by Delaware River.

George Fitzwater, aged 66, [Lib. C. fol. 469. Int. 110. fol. 473.]

That Bombay Hook has always, as this Deponent understood,

heard and believes, been esteemed the Head of the said Bay of Delaware. That Bombay Hook, or the Head of the said Bay, is about 30 English Statute Miles to the Southward of the Middle of the Town of Newcastle, as he computes and believes. And says he became acquainted with the Middle of the said Town by his having been frequently in that Town.

Samuel Preston, aged 75, [Lib. B. fol. 312. Int. 4. fol. 314.]

Has been acquainted with the Peninsula which contains Part of the 3 lower Counties, Part of Maryland, and Part of Virginia, 53 or 54 Years, by frequently travelling in divers Parts of the said Peninsula; which Peninsula bounds, on Chesopeak Bay, towards the West.

James Logan, aged 66, [Lib. B. fol. 76. Int. 4. fol. 84.]

Also says that the said Peninsula bounds, to the Westward upon Chespeoak Bay.

Benjamin Eastburn, aged 44, [Lib. C. fol. 678. Int. 4. fol. 685.]

Has known Part of the Peninsula which contains Parts of Virginia, Maryland, and the three Lower Counties about eight Years. The Peninsula is bounded to the Westward by Chesopeak Bay.

Thomas Noxon, aged 40, [Lib. C. fol. 488. Int. 4. fol. 489.]

Is acquainted with the said Peninsula, and has known it about 20 Years. Became acquainted therewith by travelling in several Parts thereof by Land, by sailing in and out of Delaware Bay, and by sailing in some Parts of Chesopeak Bay; but, more particularly, from making a Survey in 1737, by running a Traverse from the Town of Newcastle, down, thro' Part of Newcastle County, then thro' Kent County, and afterwards thro' Sussex County, to Fenicks's Island, which the Deponent was then told had been formerly called Cape Henlopen, and had been esteemed the Southern Bounds of Sussex County. Says the said Peninsula is bounded, to the Westward, by Chesopeak Bay.

James Logan, aged 66, [Lib. B. fol. 76. Int. 110. fol. 217.]

That the Head of the Bay of Delaware in his judgment is several Miles to the Southward of the Town of Newcastle; but how many, he can't take upon him to ascertain.

Samuel Preston, aged 75, [Lib. B. fol. 312. Int. 110. fol. 447.]

Has known Delaware Bay about 50 Years, and hath heard and believes that the Head of the said Bay is at Bombay Hook on the same Bay, which he believes is about 25 or 30 English Statute Miles to the Southward of the Middle of the Town of Newcastle, but is not very well acquainted with the Distance. That he knows the said Town a long Time, and has been very frequently there.

24TH BRANCH, Proof of our general Map, and where the true Isthmus is, being formed by the Tide Waters flowing very near to within 4 Miles of each other, in Apoquinomy River and Bohemia River.

Benjamin Eastburn, aged 44, Surveyor General in Pensilvania
[Lib. C. Fol. 678. Int. 123. Fol. 685.]

Has lookt on the Map markt P E N, (which is the Manuscript Original General Map whereof you have a printed Copy at the Beginning of this Book) Says it was drawn by himself, and he believes it is a true Representation of the Parts therein described. For Reasons of his Belief says he drew all the Parts layd down in the same, between the Line markt a Parallel of Latitude to the Southermost Part of Philadelphia City, and another markt T E M, according to a careful and exact Mensuration of the Parts there represented, made by him. That he drew all the other Parts of said Map, representing the Lands one Delaware River, Delaware Bay, and the Ocean, down to the Place in the said Map called Cape Hinlopen, partly, from his own Observations, and partly, from Returns, and Accounts of Surveys, made by Deputy Surveyors into the Office of the Surveyor General of Pensilvania. That Susquehannah River, to the Northward of Conestogo Creek, is laid down by Returns of Surveys now remaining in his Office. That he drew that Part of the said Map which is between the said Line T E M, and the Line markt B A L, on the East Side of Susquehannah River, from actual Surveys made of a great Part of the Lands represented to lie between those Lines Certificates of which Surveys, and Plats of the same, have been returned to, and are now in the said Office. That he drew the Parts of said Map, laid down for, and about, the Head of Chesopeak Bay from the said Line B A L down to the Place in the said Map called Sassafras River, partly, from his own Observations, and partly from the Observations of others, that were communicated to him. And that he drew all the remaining Parts of the said Map, to the Southward of the said Place marked Sassafras River on the said Bay of Chesopeak, from the best Drafts and Maps thereof that he could procure. Has lookt on the Line markt A, and says that the River, where the West end of the said Line terminates, marked M, is called Bohemia River, which flows out of Chesopeak Bay; and that the Water or Creek, where the East end of the said Line terminates, marked N, is called Apoqueminink, commonly called Apoquinomy, which flows out of Delaware. Has heard, and believes the Tide-Water does flow, in Bohemia River, as high as Letter M, and has also been informed, and believes that the Tide-Water, formerly did flow as high up

Apoquinomy Creek as Letter N, but is now obstructed by erecting a Mill-Dam a-cross the Creek, about a Mile below the Place N. To which Dam he has seen the said Water flow. And believes the said Places M and N, are about four Miles distant from each other. And that he is well assured there is not any Place in the said Peninsula or Tract of Land, where the Tide-Waters, flowing out of Chesapeake Bay, or Susquehannah River, do approach, or come so near to the Tide-Water, flowing out of the Bay or River of Delaware, as they do at the said Places markt M and N.

Thomas Noxon, aged 40, [Lib. C. fol. 488. Int. 123. fol. 519.]

Says the said Map P E N, was drawn by the said Benjamin Eastburn, Surveyor General of Pensilvania; and from this Deponent's Acquaintance with, and Observations from time to time of the several Parts of the Country and Places, laid down and described in the said Map, And from the Deponent's having compared the same with a larger Draft or Map, which this Deponent formerly took and drew of the three lower Counties, and Part of Maryland, by an Actual Survey, or Traverse, run by this Deponent from Newcastle Town on Delaware, down thro' that Side of Newcastle County, and thro' Kent and Sussex Counties to Lewis Town, and to the South Cape of Delaware, and from thence, by the Ocean to Fenwick's Island, and also by and from this Deponent's having taken the Bearings and Distances of several of the Waters and Rivers about the Head of Chesapeake Bay, with, or from, some of the Creeks that empty themselves into Delaware River, and of the Bearings and Distances of some Parts of the same River, he is induced to believe that the Lands and Waters, on the Side of Delaware Bay and River, and the Ocean, are laid down and described, in the said Map, as correctly and truly as the same could be done, without making an Actual Survey of the Out-Lines of the Lands adjoining upon Delaware Bay and River up to the Town of Newcastle. As to the Line markt A, he speaks exactly as Eastburn does, only postively of his own Knowledge, that the Water flows out of Chesapeake Bay to the Head of Bohemia River at the West End of that Line markt M; and that the East End of the said Line markt N, is the Head of Apoquinomy Creek, which empties itself into Delaware River. And says positively that that last Water did flow to Letter N till he himself made the Mill-Dam, which has stopt its Flowing thither, by about one Mile now. He says he has measured the Distance between M and N, and so knows it to be about four Miles. And believes no Waters, flowing out of Chesapeake Bay, approach so near, to any of the Waters flowing out of Delaware

River or Bay, as those do, at the Head of Bohemia River and Apoquinomy Creek.

Thomas Miles, aged 49, Surveyor in another Neighboring Province of New Jersey, [Lib. C. Fol. 541. Int. 123. Fol. 542.]

Believes the said Map was drawn by Benjamin Eastburn; and says that the Draft of the Head of Chesopeak Bay appears to him to be drawn nearly agreeable to what it represents. And that Delaware River, from Naaman's Creek down to Apoquinomy Creek, is drawn nearly agreeable to the Courses of the said River. Which he believes, because he has had frequent Occasions, for above sixteen Years past to survey Lands on the East side of Delaware River, on the Shore side, from the Land opposite to the Mouth of Apoquinomy aforesaid, upward, to the Place markt Naaman's Creek, and, in that Time, having taken the Breadth of the said River by Mathematical Instruments, in two Places, and from other Observations of the Bearings and Distances of the several remarkable Points and Places on the said River, this Deponent in 1733, framed a Draft thereof, from 7 or 8 Miles below Newcastle Town up to ten Miles beyond Newcastle Town; and, has, also, taken a particular Observation from the Town of Newcastle down to the Place on the said River markt P. which is called the Bite; and has, upon Examining, found the said Map to agree with all his said Experience and Observations. Further says, he believes the said Draft of the Head of Chesopeak Bay is truly drawn, because it is agreeable to Observations made by the Deponent the middle of last Month, when, from the Place in the said Map called Turkey Point, he observed the Bearings of Susquehanna, Elk, and North East Rivers, and also the Course of Chesopeak Bay downward. He exactly agrees with Eastburn and Noxon, that the Tide Water flows out of Chesopeak Bay, up Bohemia River, to Letter M. That the other Water up Apoquinomy does not now, by about one Mile, flow to Letter N. because of the Mill-dam, but he has observed how high the Tide rises at the Mill-dam, and the small Ascent of the Branch from thence to Letter N. and says that, before erecting the Mill-dam, the Tide Water did flow as high as Letter N. Says that by riding between M and N. he computes the Distance to be about four Miles. Is not well acquainted with the Peninsula to the Southward of the Parts he has mentioned, but says positively there is not any Place to the Northward of Line A. where the Tide Waters, flowing out of Chesopeak Bay, and Delaware, do approach and come so near as at the Places markt M. and N.

Jacob Heulings, Esq., aged 58, Surveyor in West Jersey [Lib. C. Fol. 530. Int. 123. Fol. 531.]

Has looked on the said Map markt P E N, and says it was

made by Benjamin Eastburn. That he is acquainted with the Water and Branches in the said Map laid down for the Head of Chesopeak Bay, with the Lands lying on Delaware River, between Newcastle Town and St George's Creek and with the Lands lying between the said Head of Chesopeak Bay, and the said Lands lying on Delaware as aforesaid. And verily believes the said Map is as true and exact a Representation of those Parts, as can well be made. The Reasons of his belief are, that he has seen a Map which he was informed contained Drafts of all the particuliar Surveys of the Land survey'd in Newcastle County. That it appeared by the said Map that all the Land in the said County lying on Delaware River, had been surveyed and were there distinctly and particularly laid down, together with the said River Delaware and the several Creeks or Rivers in the said County running into Delaware; and this Deponent with some other Persons skilled in Surveying, in order to try the Truth of the same Map, did, with proper surveying Instruments, try the Course of the said River Delaware, from Newcastle downward below the Bite markt with the Letter P: which Courses the Deponent has since compared with those laid down in the said Map, and found they exactly agreed with them. That, afterwards, the Deponent, and the Persons aforesaid, went over to the Head of Chesopeak Bay, and there took the general Course and Bearings of the Lands, Rivers and Waters there, (but collected the Distances from the Informations of Persons residing thereabouts) with which Courses and Bearings of the same Lands, Rivers and Waters, and the Informations aforesaid, the Map now produced well agrees. That the Deponent afterwards, rode, divers Times, a-cross, from the said Head of Chesopeak Bay to divers of the nearest Parts of Delaware River aforesaid and the Branches thereof, and computed the Distances as well as he could, and, therefore, thinks the Distance from the said Head of Chesopeak Bay to the nearest part of Delaware River, as laid down in the said Map, is nearly agreeable to the true Distances of those Places from each other. He has looked on the Line A. and gives exactly the same Account as all the rest, of the Tide Waters flowing respectively to the several Ends of M and N of that Line, and believes the Distance between them to be about four Miles. Is not acquainted with the said Peninsula, to the Southward of the Parts he has mentioned, but says (positively) there is not any other Place to the Northward of Line A. where the Tide Waters, flowing out of Chesopeak Bay and Delaware, do approach and come so near each other, as they do at the Places Mark'd M and N.

NOTE—That Place, therefore between M and N, thus established, where the Tide Waters on each side, flow the nearest

to each other, at four, or, as now, at five, Miles Distance, is what we rely on, as the Isthmus and Conclusion of the whole Peninsula. And the Matter mentioned by Mr. Logan in his Answer to the next Interrogatories for judging it to be (what the others swear it is) the nearest, is an exceeding strong one: for in War Time, when they were afraid of Coasting all round the Peninsula, Merchants would most certainly chuse the shortest and nearest Land-Carriage for their Goods a-cross the Peninsula, which he says, was precisely from the common Landing at Apoquinomy Creek, to the common Landing at Bohemia River, which Landing-Places for Merchandise were but about 7 or 8 Miles asunder.

25TH BRANCH, Proof where the before-mentioned Isthmus formed by the flowing Water is, and also, where another Isthmus formed by the navigable Water is.

James Logan, aged 66, [Lib. B. Fol. 76. Int. 6. Fol. 86.]

Takes the Isthmus of a Peninsula to be, where the Navigable Waters, on each side, approach the nearest to each other. Says the Navigable Waters of Apoquiminink Creek, and of Bohemia River, are nearer to each other than any that run into the Bay of Chesopeak, and the Bay or River of Delaware. The Reasons he has to believe the said Creek and River do approach nearer to each other than any other navigable Waters that run into the said Bay or River Delaware, are, that in 1706, he went into a Boat, up Apoquiminink Creek, to the common Landing on the said Creek, and from thence by Land, to the common Landing on Bohemia River aforesaid, which was then reputed to be about 7 or 8 Miles, and at that Time, in the French War, was used as a Passage and carrying Place, the nearest between the said Bays of Chesopeak and Delaware, for the Conveyance of Goods imported from Britain in Fleets under Convoy to Virginia and Maryland, which were consigned to Philadelphia and New-castle on Delaware. That the Course of Delaware River from Apoquiminink, as far to the Northward as the Town of New-castle, (which he supposes may be near the same Latitude with the utmost Extent of the Bay of Chesopeak) is not very much different from North, but the Head of Chesopeak Bay is so broken, by the three Arms that make it, which come from Bohemia River, Elk River, and North-East River, and the Necks of Land are so broke, between these several Arms, that there cannot be said to be any Parallelism on that side. That at the Head of Chesopeak Bay the great River Susquehannah enters which last-mentioned River, and the River Delaware, from the said

Head of Chesopeak Bay, so much diverge, that in the Latitude of Philadelphia, (which at the utmost Extent is not above 24 Miles more Northerly than the Town of Newcastle) upon a direct West Course, they are above 60 English Miles distant from each other. That the Waters of Delaware and Chesopeak Bays do so diverge, below, or to the Southward of Apoquinimink and Bohemia aforesaid, that at the Cape or Entrance of Delaware Bay, the Breadth of the said Peninsula, upon a direct West Course, is, in his Judgment, not much, if any thing, less than the aforesaid Distance of 60 Miles.

Thomas Noxon, aged 40, [Lib. C. Fol. 488. Int. 6. Fol. 492].

Says that, if the Isthmus of the said Peninsula shall be judged to be formed by the nearest approach of the flowing Waters out of Chesopeak Bay into the Rivers or Creeks thereof, and of the flowing Waters out of Delaware Bay and River into the Creeks thereof—Then the Isthmus is formed by the Head of Bohemia River, which runs into Chesopeak Bay, and the Head of Apoquinomy Creek that runs into Delaware. The Waters of which Creek and Rivers did, about 12 or 13 Years ago, flow within about four Miles of each other, but now by reason of a Mill erected on the said Creek, they don't flow nearer to each other than about five Miles. But, if it shall be judged that the Isthmus is form'd by the nearest approach of Chesopeak Bay, and Delaware Bay or River to each other—Then the Isthmus of the said Peninsula is formed, by the Easternmost Part of the Head of Chesopeak Bay aforesaid, near the Mouth of Susquehannah and North-East Rivers, and that Part of Delaware River about four Miles below the Town of Newcastle, called the Bite, because, there, as the Deponent from the best Observation he has made believes, the said Bay of Chesopeak, and the River of Delaware are nearer to each other, than any other Parts of the Bay of Chesopeak and Delaware River, or the said Bays of Chesopeak and Delaware, Which Bite and Head-Line of Chesopeak Bay, the Deponent believes are near, or about, twenty-two Miles distant from each other. And that, from the said Bite, and the Head of Chesopeak Bay aforesaid, the Waters of Delaware River and of Chesopeak Bay, do diverge from each other, both upward, and downward.

Thomas Noxon, aged 40, [Lib. C. Fol. 488. Int. 124. Fol. 525.]

He has look'd upon the produced Map mark'd P E N, and upon the Line in the said produced Map mark'd B. Says that the Water at the West End of that Line and Markt O, is Part of the Head of Chesopeak Bay, and that the Water at the East End of the said Line at the Letter P, is called the Bite of Delaware River below the Town of Newcastle. And says the Dis-

tance between the Waters at O. at the West End, and P at the East End, is, as he believes, near, or about twenty-two Miles, he being well acquainted with the said several Places and the Lands lying between them, and lives in the said County of Newcastle.

Jacob Heulings, aged 58, [Lib. C. Fol. 530. Int. 124. Fol. 539.]

Says exactly the same as Mr. Noxon, and that he by riding between the said Places O and P. did compute the Distance between them was about twenty-two Miles; and he adds that, at the said Places mark'd O and P. the Bay of Chesopeak and the River of Delaware do approach nearer to each other, than the said Bay of Chesopeak or the River Susquehannah due to the said River Delaware, in any place to the Northward of the said Places mark'd O and P.

Thomas Miles, aged 49, [Lib. C. Fol. 541. Int. 124. Fol. 550.]

Says the same as Mr. Heulings,

Benjamin Eastburn, aged 44, [Lib. C. Fol. 678. Int. 124. Fol. 693.]

Confirms all the same, and says the Distance between O and P, as he computes and believes from personal Observations which he himself has made there, and from credible Accounts which he has had from other Persons, is about 22 English Statute Miles. And is well satisfied there is not any other Place upon the said Peninsula or Neck of Land which lies between the Bay of Chesopeak and Susquehanna River on the one side, and the Bay and River of Delaware on the other, where Chesopeak Bay and Susquehanna River, approach or come so near to the Bay or River of Delaware, as the Bay of Chesopeak at the Letter O does to the River of Delaware at the Letter P as described in the said Map.

NOTE—You are not to expect that the Defendant should endeavour to clear up this, or any other Point, he affects only to render doubtful and uncertain; and therefore, has not examined to any thing in certainty about this, or many other matters; and as the main Waters themselves approach nearest here between O and P, this may be thought, on that account, the true Isthmus; we think otherwise, because the flowing Waters, as before observed, meet, (lower down) within 4 Miles of each other, whereas these are 22 asunder; and we think the narrowest Neck must make the Isthmus which is about 9 Miles more South, than the Line which we are now upon; but, if this be thought to be the Isthmus, it does not at all hurt or effect our Case, or any one of our Arguments.

26TH BRANCH. Proof of several Springs that arise in the Peninsula, and run, from the same common Head, both ways, into the Bays on each side of the Peninsula.

James Scotten of Maryland, aged 36, [Lib. B. Fol. 294. Int. 21. Fol. 295.]

Is pretty well acquainted with some Parts of the Neck of Land [he means the Peninsula] which lies between the Bay of Chesopeak and the Bay and River of Delaware. That the Lands, on the West side of the said Neck, are called Maryland, and are under the Government of Lord Baltimore; and the Lands, lying on the East side of the said Neck, are called the three Lower Counties of Newcastle, Kent and Sussex, and are under the Government of the Proprietors of Pensilvania. Says that the Rivers Choptank—Chester—and Sassafra, take their Rise in the said Neck, and, he believes, empty themselves into the Bay of Chesopeak. And that the Creeks commonly called Jones's and Duck Creek take their rise in the said Neck, and, as he has been informed and believes, empty themselves into the Bay or River of Delaware. Says there is a Pond in the said Neck, called Island Pond, from whence a Stream runs into the Head of Chester River aforesaid. And that there is another Pond in the same Neck, about three Quarters of a Mile distant from Island Pond aforesaid from whence a Stream runs into Chester River aforesaid, and also from whence another Stream runs into Duck Creek aforesaid.

Thomas Powell of Maryland, aged 41, [Lib. B. Fol. 298. Int. 21. Fol. 299.]

Is pretty well acquainted with some Parts of the said Neck of Land which lies between the Bay of Chesopeak, and the Bay and River of Delaware. Says the Lands on the West side of the said Neck are called Maryland, and are under Lord Baltimore's Government; and the Lands lying on the East side of the said Neck are called Newcastle, Kent, and Sussex, and are under the Government of the Proprietors of Pensilvania. Says the Rivers of Choptank and Chester take their rise in the said Neck, and he believes, empty themselves into the Bay of Chesopeak and that the Creeks commonly called Jones's and little Duck Creek also take their rise in the said Neck, and as he believes, empty themselves into the Bay or River of Delaware. Says there is a Pond in the same Neck, called Island Pond, from whence a Stream runs into the Head of Chester River aforesaid, and also, from whence, another Stream runs into Jones's Creek aforesaid. And that there is another Pond in the same Neck, about three quarters of a Mile distant from Island Pond aforesaid, from whence a Stream runs into Chester River aforesaid.

and also from whence, another Stream runs into Delaware. And that there is a narrow Swamp, in the said Neck, from whence, two Streams issue, one of which runs into Choptank River, and the other into Jones's Creek aforesaid.

James Logan, aged 66, [Lib. B. Fol. 76. Int. 21. Fol. 129.]

Is well acquainted with the said Neck of land lying between Chesapeake Bay, and the Bay and River of Delaware, the Lands on the West side of said Neck are Part of Maryland, and with the Inhabitants thereof are under the Jurisdiction and Government of Lord Baltimore; and the Lands on the East side of the said Neck is the County of Newcastle, and further down the Bay of Delaware, are the Counties of Kent and Sussex, and which said three Counties are under the Government and Jurisdiction of the Proprietors of Pensilvania. Says there are several Rivers and Streams of Water which rise in the said Neck, and empty themselves into the Bay of Chesapeake, viz. Bohemia, Sassafras, Chester and Choptank with divers others. Says there are several other Rivers or Creeks and Streams of Water, which also rise in the said Neck, and empty themselves into the said Bay and River of Delaware, viz. Red Lion Creek, St. George's Creek, Apoquiminink Creek (all within a very few Miles of each other) Duck Creek, St. Jones' Creek, Murtherkill and divers others to the Southward. But, as to the first Fountains or Springs of them it's well known that not only Peninsulas but Continents, have most frequently, a rising Ridge, from which the Springs of the Waters, flowing contrary ways often rise very near to each other, tho' their Mouths are, not unfrequently, above 1000 Miles distance from each other. Has heard and believes that some of the Streams, issuing from the Springs in the said Neck, very nearly interlock with each other; but the Navigable Water of the nearest of them, (below what has been abovementioned of Apoquiminink and Bohemia) to the best of his information, is more than twenty Miles Distance.

Mark Manlove, aged 61, [Lib. B. fol. 42. Int. 21. fol. 43.]

Knows a Part of the said Neck of Land, and gives the like Account as the others, as to the West and East Sides of it, being under Maryland and Pensilvania Government. Has seen the River Potomoke—Wicotomoco—Nauticoack—Choptank—Wye, and — Miles, which take their Rise in the said Neck; and he believes, by their descending towards Chesapeake Bay, that they empty themselves into it. Has likewise heard and believes, that the Rivers Chester—Sassafras, and Bohemia also take their Rise in the said Neck, and empty themselves into Chesapeake Bay aforesaid. Has also heard, and believes, that the Rivers Elk and North-East empty themselves into the said Bay of

Chesopeak; but does not know, nor has heard where they rise. Says, that Muspillion and Murderkill, Dover and Little-Creek—also take their Rise in the said Neck, and empty themselves into the Bay of Delaware. And that Lewes Creek, formerly called the Whorekills—Broadkill—Prime-Hook—Slaughter-Creek—Cedar-Creek—Duck-Creek—Blackbird-Creek—Apoquimink—St. George's—Christiana—and others empty themselves into the Bay and River of Delaware; but where they respectively take their Rise, knows not. That one of the Branches of Nauticoak River and one Branch of Muspillion Creek aforesaid flow from a Pond of Water of about 4 or 5 Acres. And that there is another Branch of the said Muspillion Creek, whose Rise he does not know, which extends itself much further to the Westward than the said Pond; and believes it takes its Rise from the same Swamp or Pond with another Branch of the said River Nauticoak. And that one of the Branches of Murderkill aforesaid, at its Rise, is divided from the Rise of another Branch of the said River Nauticoak, only by a small Ridge of about 3 or 4 Rods Breadth. And that the main Branch of the said Murderkill, extends still much further to the Westward. That one other Branch of Murderkill aforesaid, and a Branch of Choptank River aforesaid, take their Rise from one and the same Marsh or Piece of low Ground, containing about 7 or 8 Acres. That one of the Branches of Dover Creek, and of the said River Choptank, take their Rise from one and the same Piece of low Ground or Swamp, containing about 40 or 50 Acres. And that several of the Rises of the Rivers and Creeks aforesaid, that empty themselves into Delaware Bay aforesaid, lie to the Westward of the Rises of the said Rivers that empty themselves into the said Bay of Chesapeake: so that they interlock in many Places.

NOTE—These 4 last Depositions are to counterprove an idle thing, attempted by one Witness for the Defendant, who wants to carry the Isthmus (of a Peninsula) up, he himself knows not where, into the main Continent, he having found out a Place where two little Springs of Water rise, very near together, within a Quarter of a Mile of each other, and which Waters he does not pretend are Tide Waters, or flowing Waters from the Sea, Bays or Rivers. To answer any Pretence, therefore, of that kind, we have proved what? Why that down below, in the very Peninsula itself, there are many such Places, not only where the Spring Heads almost meet, but where they quite meet, and more than meet, for that they interlock: Nor is that all, for, we have gone much farther, and shewn several and several Waters, rising in the very Peninsula itself, and from one and the same Swamp or Head, which run one

way into Chesapeake, and the other way into Delaware and which, according to this Notion, would make the Peninsula (pardon the Absurdity of the Expression, for the sake of exposing the Absurdity of the Point contended for) to consist of several compleat Islands.

27TH BRANCH, Proof where Lord Baltimore's oldest Line, which he claimed in 1635, lies.

Benjamin Eastburn, aged 44, [Lib. C. fol. 678. Int. 129. fol. 704.]

Has again lookt upon the Map markt P E N, and upon the Red Line therein, markt 1635, and says that Line is drawn agreeable to a Line drawn for the Northern Bounds of Maryland in another Map produced to him, whereon these Words (Map of Maryland 1635, copied per Herman Moll) are endorsed, and at the top of the Inside whereof is the Title *Nova Terra Maria Tabula*. And has heard and believes the last-mentioned Map was publisht in the Year 1635, by Order of the then Lord Baltimore Proprietor of Maryland, and fixed in a Book publisht by the same Proprietor, intituled, A Relation of Maryland, together with a Map of the Country the Conditions of Plantations and his Majesty's Charter to the Lord Baltimore, translated into English.

NOTE—The Copy of Lord Baltimore's Map of 1635, produced to this Witness in America, is an exact Copy made from that in Sir Hans Sloane's Book, proved by Doctor Stack here.

And this Line proves two very material Things, viz.

1. That tho' Lord Baltimore, so early, claimed, above all the Bay of Delaware, above all the Peninsula, above the true Isthmus of that Peninsula, and even to the Head of Chesapeake Bay, and quite to the Extremity of the 40th Degree compleat, yet, all that was South of the Line which we have now granted to him by the present Articles by near 8 Miles. (And that Width of 8 Miles is 5 whoie Degrees in Longitude.)
2. It proves where he himself placed the Line of 40 compleat in 1635, namely, precisely at the Head of Chesapeake Bay, and 23 Miles South of every Part of Philadelphia. But now, he says, modern Discoveries have carried the Line of 40 compleat up as high as, or even above Philadelphia: so contends that his Grant of Part of a Peninsula shall also grow to that Extent up into the main Continent.

28TH BRANCH. Proof where the Octorara Line run by Lord Baltimore in 1683, lies; also where the Line for Temporary Jurisdiction, lately run in 1739, by Order of the King in Council, lies.

Benjamin Eastburn, aged 44, [Lib. C. fol. 678. Int. 125. fol. 696.]

Has lookt upon the Map now produced, markt P E N, and upon the Line in the said Map markt B A L. says, the said Line is called or known by the several Names of the Octorara Line, Colonel Talbot's Line, and Lord Baltimore's Line, but most commonly by the Names of the Octorara Line, and Lord Baltimore's Line. And says, that the Reason of the said Line being called by the said several Names, was, as he has heard and believes, the said Line was run and markt out by one Colonel Talbot, from the Mouth of Octoraro Creek, as described in the said Map: and that the same was so run and laid out by the Order and Direction of Lord Baltimore; and who, as he has heard, was present at the Running of the same Line or Part thereof. And says he has heard and believes that the Course of the said Line was run from the Mouth of the said Creek East, according to the Compass. Says, there are several People settled and dwelling upon the South Side of the said Line, and near thereto, who hold their Lands by Grants from the Proprietor of Maryland, and own that Government. And that as he believes, there are not any Settlers to the Southward of the said Line (and to the Westward of the 3 lower Counties) who hold their Lands under the Proprietors of Pensilvania, or own the Government of Pensilvania. And says, there are also several People settled upon the North Side of the said Line, and near thereto; and that the greatest Part of them hold their Lands by Grants from and under the Pensilvania Proprietors, and own that Government. And that there are also some People (but the Number of them he knows not) who are settled to the Northward of, and near to the said Line, who hold their Lands by Grants from the Proprietor of Maryland, and own that Government: and that the first of such Settlements under Maryland Rights, was not above 30 Years ago. And says, he has lookt upon the said Map, and upon the Line therein markt T E M. And says, the said Line is called The Temporary Limits between the said Provinces of Pensilvania and Maryland, and was run, in pursuance of an Order of the King in Council, in the Months of April and May, 1739. That the said Line, from the East End thereof as far as the River Susquehanna, was run, by this Affirmant, as a Surveyor on the Part of Pensilvania, and William Rumsey, and John Ladd, as surveyors on the Part of Maryland, under the Directions of certain Commissioners appointed by the respective Governors of both the said Prov-

inces. And says the Course of the said Line is true West. And that the said Temporary Line, at the said River Susquehanna, is between three and four Miles to the Northward of the West End of the Line in the said Map markt B A L. or Octorara Line aforesaid And further says, that the residue of the said Line, which is on the West Side of Suquehanna River, was run by this Affirmant and Samuel Lightfoot, according to the Directions of the said Order of the King and Council. The Place of Beginning of such Residue of the said Temporary Line from the West Side of Susquehanna River aforesaid, being first settled and agreed upon by and between the said Commissioners on both sides.

NOTE WELL.—The Order made by the King in Council for running this Temporary Line for the Exercise of Jurisdiction, and to prevent Riots, was made in 1738, pending this Suit. Lord Baltimore would not consent that the very Line of the Articles should be run for that Temporary Limit, lest it should confirm the Articles: and yet it was to be something near that Line, but not the very Line of the Articles; Therefore it was ordered, That, on the East Side of Susquehanna River, the Temporary Line should be (not just fifteen Miles, but) fifteen Miles and a quarter South of Philadelphia, and, on the West Side of Susquehannah River, (not just fifteen Miles, but) fourteen Miles and three quarters South of Philadelphia.

This is exceedingly material, for hereby it appears that the Temporary Line, when 15 Miles and a quarter, is yet near four Miles (and the real Line of the Articles is tull four Miles) North of the Octorara Line; just so much, and for the whole Length of the Longitude of Pensilvania, (which is no less than five whole Degrees in Longitude) have we given, by the present Articles, over and beyond the most excessive of all the Claims from time to time made by Lord Baltimore, and his Ancestors, purely as a Consideration, and a very large and ample one too, to buy off his Nominal Claim to the three lower Counties. Nay, we have given a great deal larger Space; for please to remark the Octorara Line of 1683, was run East according to the Compass, and this Temporary Line is run true East and West, allowing for the Variations; so that when you come to run any Distance Westwards, then instead of four Miles they will be 14 or 24 Miles, or a great deal more even than that asunder: All which Space for the whole five Degrees of Longitude, we have granted to him, on our Part by the Articles, as the valuable Consideration for purchasing the Release of his Claim to the three lower Counties, and all this Land so given by us to him, is at least 26 Miles above every Part of the Bay of Delaware,

and is not in the Peninsula, but up within the main Continent, at least seventeen Miles further North than our true Isthmus. And at least nine Miles further North than the upper Isthmus. To such a great Degree had his former Claims and Encroachments extended; and to so much greater a Degree, beyond all that, have we now given to purchase our Peace.

29TH BRANCH, containing Proof of many old Maps Foreign and English, (made before the Year 1680) which lay down both Cape Cornelius and Cape Hinlopen, and in the same manner as the Map in question did, also, where our Cape Hinlopen really lies; That the whole Country thereabouts was formerly called Hinlopen, as well as that particular Spot, that there is the Appearance of a Cape at our Cape Hinlopen; That the South Bounds of the Whorekiln District, or Sussex County, extended thither; That the Dutch had a Boundary Tree in their time, there; That Mr. Penn granted out Lands to that Place, (as soon as ever he had his Peoffment) particularly to the Duke of York, and several others; and still possesses very near to it; and that the first Cursory Claim of Maryland a little North of that South Boundary, began but in the Year 1696; also an Account for what Reasons, something like the Name of that old Cape has, lately, been transferred up to the Mouth of Delaware Bay.

Thomas Grame, aged 51, [Lib. C. fol. 566. Int. 130. fol. 672.]

Has lookt upon the Map, markt D U T, and says, that the great Bay or River laid down therein, next to Chesopeak Bay, is now called Delaware Bay. That he has lookt upon the Place laid down there, for the Entrance into the said Bay of Delaware. And says the Capes, that form the Entrance into the same Bay, are, in the said Map, called Cape Cornelius and Cape May: To the Southward of which, there is another Cape laid down, in the said Map, which is there called Cape Hinlopen. Does not know when the said Map was printed or published: but says, he was at Leyden in Holland, in 1712, and there bought the said Map, amongst a Bundle of other Maps, all loose, at a publick Auction.

Benjamin Eastburn, a Surveyor, aged 44. [Lib. C. fol. 678. Int. 130. fol. 705.]

Has lookt upon the said Map markt D U T, and says, the great Bay or River laid down in the said Map, next to the Bay of Chesopeak, is now called Delaware Bay. That there is a

Cape laid down in the said Map, to the Southward of the Entrance into the said Bay of Delaware, which is there called Cape Hinlopen. And the Westernmost Cape, which forms the Entrance into the said Bay, is there called Cape Cornelius, and the Easternmost Cape May. [What are the very Words of our Articles? at Cape Hinlopen, which lies South of Cape Cornelius.] Has seen Maps publisht in a Book generally called Ogilby's America, in which the said Capes, to the best of his Memory, are all called by the same Names, given to them in the said Map markt D U T. Has never seen any Map or Maps of the same Bay, which he believed were publisht before the year 1680, wherein they were called by other or different Names. Does not know when the said Map markt D U T, was publisht, but believes it was made a long time ago, and before the Year 1680. And the Reasons of such his Belief, are, that he has heard and believes, the Dutch were formerly in Possession of the Province of New York, and all the Lands between it and Delaware Bay and River, and of the three Lower Counties of Newcastle, Kent, and Sussex on Delaware; which Possession they surrendered some time in 1664, to the English. And it appears by the said Map, that all those Counties and the several Parts of them, represented in the said Map, are distinguished and called by their former Dutch Names; and yet, the several Parts of Virginia and New-England, there, laid down, are, for the most part, called and distinguished by English Names.

Ferd. John Paris, [Lib. A. Fol. 195. Int. 20. Fol. 280.]

That he doth not know, nor hath he any reason whatsoever to believe, that in the Entering into, or concluding the said Agreement with the Lord Baltimore there was any manner of Deceit or Imposition put upon the Lord Baltimore, by describing two Capes on the Eastern side of the Peninsula, one called Cape Cornelius, and the other called Cape Hinlopen; nor in laying down Cape Hinlopen below, or more Southward, than Cape Cornelius, and the Reasons why this Deponent doth not believe that his Lordship was at all imposed upon, or deceived therein, are, that the Lord Baltimore's own written Map, so produced and mark'd by him, appeared to contain both the said Capes, with their Names, in the like manner, as the written Map so produced by the Plaintiffs, or one of them did. And not only so, but this Deponent hath seen printed Maps which appear to be (and this Deponent supposes the same are) old foreign Maps; and hath also seen a large printed Work of several Volumes in Folio, said to be done by John Ogilby Esq: Cosmographer and Geographick

Printer to the late King Charles the Second, and said to be printed (and which this Deponent supposes might be printed) in the Year 1671, before the Date of any of the said Grants to Proprietary William Penn; in one of the Volumes of which Work, now produced and shewn to this Deponent, and Letter'd on the Back thereof (Mr. Ogilby's Atlas, Tom. 2.) a printed Map is contained, between Fol. 168 and 169, wherein both the said Capes are clearly and distinctly mark'd, in some such like manner, to this Deponent's Belief and Apprehension, as they were in the Lord Baltimore's, and in the Plaintiffs respective written Maps, so produced as aforesaid.

James Logan, aged 66, [Lib. B. Fol. 76. Int. 11. Fol. 109.]

Saith as he has collected from his Reading, that, after the Northern Continent of America had been discovered by Sebastian Cabot sometime before the Year 1500 by Commission from King Henry the Seventh of England, the first Englishman, that this Affirmant finds to have taken Notice of the said Bay and River now called Delaware, was the Lord Delaware, who in his Voyage to Virginia as Governor of that Colony, in the Year 1610, seems to have given it that Name, some time after which, it is most certain, that the Dutch were the first that took Possession of the Land upon the said River and Bay; and Cornelius May, a Dutch Skipper, in his Voyage to New Netherland appears to have given his Christian Name to the Southern Cape, and his Surname to the Northern Cape of the said Bay, which Name the said Northern Cape retains to this Day; and from the said Cornelius it appears, that some Place in the said Bay, was called Newport May and saith, that he finds also, by the Swedish Histories, that Gustavus Adolphus, King of Sweden, who was killed at the Battle of Lutzen in Germany, in the Year 1632, had in his Life-time, sent a Colony of Swedes into the said Bay and River; but is well assured, from the said Histories, that under the Reign of Christiana, Queen of Sweden, between the Years 1640 and 1645, a large Colony of that Nation were sent into the same Bay and River, who built several Forts, and made considerable Settlements, very soon after their Arrival there; particularly at Elsenburgh, on the East Side of the said Bay; and on the West of the said River, upon Christiana Creek so called from the said Queen's Name; also at or near Upland which Name that Place retained till the Proprietor William Penn's Arrival, who changed it into that of Chester; And further saith, that after this, (as he finds by the said Histories) in the Year 1655, the Dutch Government of New Netherland, considering those Settlements of the Swedes as an Intrusion and Invasion of their Right and former Possession, sent a mili-

tary Force sufficient to dislodge them; upon which the Swedes submitted, and from that time acknowledged the Dutch Government. But in the Year 1664, (as he has collected from Histories) a Fleet was fitted out from England, to reassert the ancient English Claim, as Prior to all the others Possessions; which Fleet first attacking the Fort at New Amstell, now called New York, took the same from the Dutch by Surrender; as also very soon after, the Bay and River of Delaware, which having been, before that Time, called by the Dutch South-River (in contradiction to Hudson's River, which was called by them the North River) the said River, from that Time of its Capture, had its first Name of Delaware restored to it. And farther saith, that from the said Year 1664, to the Year 1673, the Country upon the said Bay and River, continued under the English Government, and received divers Inhabitants from New York and Long Island: but the Dutch having in the War declared by England against the States General in 1672, retaken the Colony of New York, and with it the said Bay and River of Delaware, the same were re-surrendered by the Dutch, to the English, by the Treaty of London in February, 1673; and, from that Time, the said Country hath ever since continued under the English Government, and particularly under the Government of the Duke of York till March, 1684; at which time the upper and West side of the said River, beginning 12 Miles Northward of Newcastle Town, was by the Patent from King Charles the Second, granted to the said William Penn, with large Powers of Government, under the Title of the Province of Pensilvania, and the following Year, viz. in August 1682, the said William Penn obtaining Grants, from the said Duke of York of all the Lands on the West side of the said River and Bay of Delaware, Southwards of 12 Miles Distance from Newcastle, to the Cape, he, in the said Year 1682, arrived himself in the said Province, and transported thither, from England, a vast Colony, in 32 Ships, at sundry times before he himself left the Country in 1684; in which Expedition, during the said William Penn's continuance in the Country, (which did not amount to the full Term of 2 Years) he the said William Penn (as this Witness is well assured from the intimate Acquaintance he had afterwards with the said William Penn's Affairs) expended not less than a Sum between 6 and 10,000*l.* sterling. And further saith that the said Province of Pensilvania, and the three Lower Counties are well known to be now very popuious, and in flourishing Condition, but can't possibly give an Account of the Number of Taxables, or People in General, in the said 3 Lower Counties, having never in the Course of his Business had occasion to be acquainted therewith.

The same, [Int. 29. Fol. 149.]

That he is acquainted with the Bay of Delaware, having gone twice down the said Bay to Sea, and came twice up the same from Sea; but never had occasion to observe the Capes thereof. That he has seen several Maps of that Part of America, published before the Year 1680, but having no previous Notice of being interrogated thereto, this affirmant is not so well prepared to answer as he otherwise might have been, but well remembers to have seen Captain John Smith's Map mentioned in the Affirmant's Answer to one of the preceeding Interrogatories; and also has seen a Map published by the Lord Baltimore himself in the Year 1635, with a particular Account of his Province of Maryland, which this Affirmant presumes will be produced upon the Hearing of this Cause, but does not remember, in the said Map, any Notice was taken of the Capes of Delaware aforesaid; that the Affirmant has also seen a Dutch Map of New Netherland, which appeared to him, to have been published while the Country was in the Possession of the Dutch; the Author of which, to the best of this Affirmant's Remembrance, was Jonckers; and also this Affirmant has seen a Map published in Ogilby's America, which, to the best of his Remembrance, was printed in the Year 1671, in both which last mentioned Maps, there are two Capes expressed or laid down to the Southward of the said Bay of Delaware: the most Northerly whereof was therein called Cape Cornelius, and the more Southerly (now generally called the false Cape) was therein called Cape Henlopen or Hinlopen. And this Affirmant further saith that the true Name of the said last mentioned Cape appears to have been taken from the Word [Heenloopeen] according to the true way of spelling it, which word, being Dutch, is in the Dutch and English Dictionary publish'd at Amsterdam by William Sewell in the Year 1708, there interpreted (to run away;) but the word (Inlopen) in this Interrogatory mentioned, he conceives ought to have been wrote (Inloopen) which in the said Dictionary is interpreted [to run in, to flow, or stream into.] And the Affirmant saith, that he hath been very credibly informed that the most Southerly of the said Capes, at some Distance from the Southward at Sea, makes the plain Appearance of a Cape: but Navigators finding it otherwise, upon a nearer Approach, gave it the aforesaid Name of Hinlopen or Heenloopeen, implying that it vanishes or disappears, and in process of Time, the Term was changed into Inloopen, and transferred to the more Northerly, and real Cape and Entrance into the said Bay of Delaware; as more properly suiting the same.

Thomas Noxon, aged 40, [Lib. C. Fol 488. Int. 29. Fol. 507.]

Is pretty well acquainted with the Bay of Delaware, which he has known about 20 Years, and has twice by Sea come into and gone out of the said Bay, and gone up and down the same. That the true Southern Cape, which forms the Mouth of Delaware Bay, is the Cape near Lewes Town but to the Southward of that Cape, and about 7 or 8 Miles to the Southward of Indian River, upon Fenwick's Island, there is the Appearance of Another Cape, well known to Sailors by the Name of the false Cape, which the Deponent hath heard frequently called Cape Henlopen by ancient People—which last-mentioned Cape from the Seaward at a Distance, has the Appearance of a Cape, but as it is approached nearer, that Appearance vanishes. Says that, about nineteen Years ago, the Deponent coming from Jamaica in a Vessel bound for New York, in some distress, endeavoured to make some Land to the Westward; that the first Land they made was the said false Cape, which the Mariners on Board, from its appearing like a Cape, apprehended it was the Southern Cape that forms the Entrance of the said Bay of Delaware. That an ancient Sailor, then on Board, who said he had been thirty Years at Sea, and part of that time in the Dutch Service, said it was the false Cape that the Dutch had called Cape Hinlopen which, he said, signified in English, Cape running away, or disappearing. That the Commander of the Vessel, discrediting what the said Sailor had said, stood in towards the same, till the main Land rise, and they came into the Shoal Water: and then, they found that the said Appearance, as a Cape aforesaid, had vanished. That thereupon, they stood away to the Eastward, and afterwards, saw the true Southern Cape of Delaware Bay. Further says, he has seen a Map in Ogilby's Book of America, and three others, (which he takes to be either Dutch Maps, or Extracts from them, by the Names of the Places being wrote in the Dutch Tongue) and which he apprehends were made before 1680, wherein the said false Cape is laid down, by the Name of Cape Hinlopen, and the said true Cape by the Name of Cape Cornelius. He understands the Dutch Tongue pretty well, and believes the said Interpretation of the Words Cape Hinlopen, which are Dutch Words, was rightly given, by the said Sailor as aforesaid. Does not understand the meaning of the Word Capin lopen, taken together, but understands the Word lopen, which is also a Dutch Word and signifies running or going, in English. That the Distance between the true and false Capes aforesaid he believes to be near or about 20 English Miles.

Thomas James, Pilot, aged 49, [Lib. B. Fol. 30. Int. 29. Fol. 33.]

That he has observed the Capes, that from (form) the Entrance into the Bay of Delaware, which are now called Cape May and Cape Hinlopen, and that, to the Southward of the Entrance into the said Bay, there is the Appearance of two Capes, tho' in reality there is only one true Cape, and which is the most Northerly, and is now called Cape Hinlopen. That this Deponent hath seen some old Swedish and Dutch Drafts of the Bay and River of Delaware, which to the best of this Deponent's Remembrance, bore Date about the Year 1672; and that in those Drafts there was but one Cape laid down to the Southward of the said Bay, which was called in the said Drafts Cape Cornelius, and is the Cape at the Entrance of the said Bay, now called Cape Hinlopen.

The same, [Int. 19. fol. 30.]

Has been acquainted with the Bay and River of Delaware, and with the Sea-Coast, to the Southward of the Entrance into the Bay, for 40 Years past; having, for all that Time used the Sea, and has been a Commander and Pilot of Vessels, for about 28 Years of the said Time. That upon the Sea Coast, to the Southward of the Entrance into the said Bay, and about 18 Miles from the said Entrance, there is the Appearance of a Cape, which off, at a Distance, at Sea, and upon the first making of it, from the Southward or Eastward, appears bluff, and like the upper Cape at the Entrance of the said Bay, now called Cape Hinlopen; but as you sail to the Northward, and approach nearer the same, it decreases and disappears; for which Reason it is sometimes called the false Cape. That the said Place which has the Appearance of a Cape aforesaid, has been formerly called Cape Hinlopen; and this Deponent has been informed by his Father, who was a Mariner, that the same was also sometimes called Cape James, or Cape Hinlopen, and sometimes the False Cape. That the before-mentioned Cape, at the Mouth or Entrance of Delaware Bay, is now, and has been ever since this Deponent used the Sea, called by the Name of Cape Hinlopen but has heard his Father say, that, in the old Drafts, it was called Cape Cornelius; but that he himself and other old Commanders called it Cape Hinlopen.

George Fitzwater, aged 66, the Defendant's Witness, but cross-examined, [Lib. C. Fol. 469. Int. 19. Fol. 471.]

That he became, and has been acquainted with the Bay and River of Delaware and the Sea-Coast to the Southward of the Entrance into the said Bay, ever since the Year 1706 or 1707, by making several Voyages from Pensilvania to the West-Indies and passing to and fro, through the said Bay and River,

and frequently falling in with the said Sea-Coast, to the Southward of the said Bay, and sailing along that Shore. And saith that he this Affirmant has frequently observed, at his coming in from Sea, that, upon the said Sea-Coast, at about 6 or 7 Leagues from the Mouth or Entrance of the said Bay, there is the Appearance of a Cape, which, upon the first describing or making the same, off at Distance, from Sea, looks bold, and like the upper Cape, which is to the Northward thereof, at the Entrance, or Mouth of the said Bay; but, upon approaching or coming nearer to it, the same loses the Appearance of a Cape, and is therefore, called the false Cape; and as this Affirmant has heard and believes, the same was, anciently, called by the Dutch, Cape Inlope, but since his Acquaintance therewith, has been generally called the false Cape.

Elizabeth Morris, aged 65, [Lib. B. Fol. 49. Int. 20. Fol. 50.]

That she has known the three Counties now called Newcastle, Kent and Sussex on Delaware, and the Town now called Lewes, for about 55 Years, which Town, formerly, before it was called Lewes, was called the Whorekill, by the Dutch, and all others. That the County of Sussex aforesaid, before it was called by that Name, was generally called and known by the Name of the Whorekill County. And that Lewis Town aforesaid was formerly in the County called Whorekill, but now is in Sussex County aforesaid. Saith that she has heard, from her Father, and others, that the said County, now called Sussex, was formerly, under the Government of New-York, and knows it has since, been under the Government of the Proprietors of Pensilvania, as one of the three Lower Counties, which were called the Territories of Pensilvania, but never heard the said County of Sussex was ever under the Government of the Proprietors of Maryland. That the said County, now called Sussex, since it has been under the Government of Proprietors of Pensilvania, did extend Southerly beyond the Indian River; which the Affirmant well remembers, because several Persons, particularly the Burtons, Stockleys, and one Fennick, (who the Affirmant heard owned Fennick's Island) lived to the Southward of that River, under the Government of the Proprietors of Pensilvania; and that divers Persons used to come, from beyond that River, and attend Sussex County-Court. And saith that she has heard and believes, that there was a Tree, marked by the Dutch, to the Southward of Indian River, as a Boundary between the said County and the Province of Maryland, which has been long since cut down, upon which a Plate of Brass was fixed, with the Figure of a Ship upon it, but the particular Place where the same Tree stood, knows not; That she never

knew or heard, that any Force or Compulsion have been used, by the Proprietors of Pensilvania, or any Persons pretending Authority under them, to oblige the People of Lewes Town aforesaid, or the Inhabitants living to the South side of Indian River, or within the Bounds or reputed Bounds of the said County of Sussex, to submit to the Government of the Proprietor of Pensilvania, or to acknowledge him for their Proprietor or Landlord, but saith that about 30 or 40 Years ago, she heard, and believes, that several persons, residing in the Southward of Indian River aforesaid, under the Government of the Proprietor of Pensilvania, were disturbed in their Possessions, by Persons claiming Authority under the Proprietor of Maryland in order to compel a Submission to his Government, and particularly heard from one Hill and his Wife, that his Cattle were drove off their Land, for that Purpose; and that she has heard from her Father, deceased, and many others, that there was a Cape, as well as she remembers, to the Southward of Indian River (but knows not certainly where) which was esteemed the Bound of Sussex County.

Samuel Preston, Esq. aged 75, [Lib. B. Fol. 312. Int. 20. Fol. 327.]

That he knows the Bay and River of Delaware, and the three Lower Counties of Newcastle, Kent and Sussex, and that he hath known Lewes-Town and Indian-River in this Interrogatory mentioned, about fifty Years; And saith that Lewes-Town aforesaid was called the Whorekill, before the coming of William Penn, Esq.; into Pensilvania, and while the said Town was under the Government of New-York; but after it came under the Government of the said William Penn, the Name thereof was changed to Lewes-Town; and that the said County now called Sussex, was always called by that Name, since the Affirmant knew it; but, before, and whilst the same was under the Dutch, that County (as this Affirmant heard and believes) was generally called Whorekill County; And that the said County of Sussex, when this Affirmant first knew it, was under the Government of the said William Penn, and, as he believes, was never under the Government of the Defendant, or any of his Ancestors. And this Affirmant further saith, that the said County of Sussex was then generally reputed and believed to extend to a small Inlett called Assawaman, which was then about ten Miles to the Southward of Indian River, and 20 Miles and upwards from and to the Southward of Lewes Town aforesaid. And saith that he became acquainted with the Southern Bounds of the said County, by his being an Inhabitant there for several Years, and being led by the Nature of his Business to a general Knowledge of the said County, and the Inhabitants thereof.

And also saith that it was generally reputed, when this Affirmant first became acquainted with the said County, that the Dutch had claimed the same as far as the Inlett called Assawaman, and near to, or at, a Place called Fenicks's Island; and that, near Assawaman aforesaid, they had set up a Standard, either upon a Tree or a Post, with a Brass-Plate, or Brass-Nails, as a Mark of their Claim. And saith, that he has heard and believes, and it was then so generally reputed and understood, that, soon after the said William Penn's becoming Proprietor of Pensilvania, and the said three Lower Counties, a Mannor was laid out, by or under the said William Penn's Directions, near Assawaman Inlett aforesaid, and was called the Duke of York's Mannor; That there were some Christian People settled to the Southward of Indian River aforesaid, and within the reputed Bounds of Sussex County aforesaid, when this Affirmant first knew the same, and who lived under the Government of the said William Penn; and that he never knew or heard, that any Force or Compulsion was ever used by any of the Proprietors of Pensilvania to oblige the Inhabitants of Lewes-Town, and those living to the Southward thereof, and Indian River aforesaid, and within the reputed Bounds of Sussex County aforesaid, to submit to that Government, or to acknowledge them as their Proprietors or Landlords. And saith, that he this Affirmant does not know of any other force or Compulsion being used by the Defendant or any of his Ancestors, Proprietors of Maryland, to oblige the Inhabitants of Lewes-Town aforesaid, or those to the Southward thereof, within the reputed Bounds of Sussex County aforesaid, to submit to the Government, save that he remembers to have heard it currently reported many Years ago, that Colonel Wittington then Sheriff of Somerset County in Maryland, had threatened the People living under the Government of Pensilvania to the Southward of, and near Indian River aforesaid, That, if they did not pay him some Taxes which he claimed from them, he would make Distress upon them for the same. And the Affirmant further saith, that he has very frequently heard it said by Navigators, that upon the Sea-Coast, about 25 Miles to the Southward of the Mouth of Delaware Bay, there is a Head-land, which off at a Distance from Sea, has the Appearance of a Cape, and is called Cape Henlopen, but upon a near Approach, the same loses the Appearance of a Cape; and that he this Affirmant has seen the said false Cape, laid down in several Dutch Maps as a Cape, and therein called Cape Henlopen.

*John Teague, of Maryland, Planter, aged 85, [Lib. B. fol. 225
Int. 20. fol. 225.]*

That he knows the Bay and River of Delaware, and the Coun-

ties of Newcastle, Kent and Sussex, in this Interrogatory mentioned, and that he has known the Town, now called Lewes in the County of Sussex, for near 50 Years; and saith that the same was formerly called Whorekills, and retained that Name, till about 18 or 19 Years ago, when it was changed to that of Lewes; and that he has also known Indian River in the Interrogatory mentioned, for near 50 Years. And saith that the said County of Sussex was formerly called the Whorekill by the English, Dutch, and other People in general; and that the same continued to be called so for many Years after this Deponent first knew it, but how many Years cannot now say; That then the Name of that was changed into that of Sussex County. And further saith, that the County wherein the said Town now called Lewes stood, when this Deponent first knew the same, was called the Whorekill, and is now called Sussex County, and was then under the Government of the said William Penn; And that this Deponent never heard that the same was under the Government of the Lord Baltimore, or the Government of New-York; And saith that the said County, antiently called the Whorekill, and now Sussex County, when this Deponent first knew the same, extended beyond, or to the Southward of, Indian River aforesaid, and to a Place called Phenix's Island, where this Deponent has been, and was there told, that that was the Exent of the said County to the Southward. And this Deponent saith, that about three or four Years after the Duke of Monmouth's Rebellion in England, but the exact Number of Years ago this Deponent doth not now remember, he this Deponent was at the said Place, called Phenix's Island, in Company with two Persons, who there shewed this Deponent a Square Post of about seven Foot high, with a pointed Head, which had three Brass-Nails driven into three of the Sides of the said Post, the Heads of which Nails were near the Size of an English Halfpenny; and which Post this Deponent supposed had been fixed there by the Indians, till he was told by the said two Persons, and afterwards by several others, that they believed the same had been placed there by the Dutch. And saith that he heard, some time after, that there was also found, upon the said Island, near, but further to the Southward of the said Post, a Tree, whereon was a Plate of Brass, which, having been grown over with the Bark, was discovered, upon cutting up and splitting the said Tree into Fence-Rails, which Information, relating to the said Tree and Plate of Brass, this Deponent had from the Son of one Thomas Mumford, who told this Deponent he had it from his Father, who had lived with Mr. Phenix, upon the said Island, and also from many others: And that he this Deponent has likewise

heard that to the West or North-westward of the said Island, and within about a Half a Mile thereof, had been also found another Tree markt on two sides thereof, with three Notches; That this Deponent does not know that there were any Christian People settled to the Southward of Indian River aforesaid, and between it and Phenix's Island, when he first knew the said Places, but that sometime after, one Barton came up from Virginia, and settled on the South-side of the Mouth of the said Indian River. That this Deponent does not know, or has ever heard, that any Force or Compulsion was ever used by the Proprietors of Pensilvania, or any other Persons pretending Authority under them, to oblige the People of Lewes-Town, or the Inhabitants living on the South-side of Indian River, to submit to that Government, but saith that about 50 Years ago, this Deponent, with five others, were prest by the Under-Sheriff of Somerset County, to go and assist him to arrest one Peter Waples for Debt, to the Southward of and near Indian River aforesaid, but the People there opposed them, and rescued the said Prisoner from them; alledging, that the said Under-Sheriff and his Assistants were out of their Precincts, being within the Government of Mr. Penn the Proprietor of Pensilvania. And further saith, that he being summoned up to Annapolis, with two others, to be Evidences, to give Information of the said Opposition, made by the said People at Indian River, he remembers the Lawyers there declared, that if the said Under-Sheriff and his Assistants had had their Bones broken, their Remedy would have been in their own Hands. And saith that afterwards Ephraim Wilson, Sheriff of Somerset County, went up, with a Troop of Horse as this Deponent was informed, and apprehended the said Waples, and carried him bound to Somerset County Prison; And saith that about 50 Years ago, the Land about Phenix's Island aforesaid, and from that, all along to the South-side of Indian River aforesaid, was called Cape Inlope. And this Deponent further saith, that about 50 Years ago, as he was conducting two Dutchmen, who he supposed were Privateers, from Somerset County aforesaid, to Whorekill, now called Lewes-Town, this Deponent remembers that, about four Miles to the Southward of Indian River aforesaid, the said Dutchmen declared they then knew where they were, for that they were at Cape Inlopen.

**William Waples, aged 63, [Lib. B. Fol. 248. Int. 20. Fol. 249.]*

That he has seen the Bay and River in the Interrogatory mentioned, but is not well acquainted with them. That he is well acquainted with the County of Sussex on Delaware, and has been in the Counties of Newcastle and Kent, but is not

well acquainted with them. And saith, that he has known the Indian River and Lewes-Town, in the Interrogatory mentioned, about 47 or 48 Years, which Town and the said County of Sussex, when the Deponent first knew them, were by the Inhabitants and others, both called Whorekill, and were under the Government of William Penn Esq; and that the said Town is now in Sussex County aforesaid; And this Deponent further saith, that when he first knew the said County of Sussex, his Father settled under the said William Penn, on the South side of the Indian River aforesaid, about three Miles up a Creek, that emptied itself into the South-side of the said River, upon Land which he purchased of President Clarke, and saith that he this Deponent being young then, knew not how far the same County extended to the Southward; but then heard that the said William Penn claimed as far as Fenicks's Inlett, near Fenicks's Island; near which Inlett, at a Place called Inlopen, or Hinlopen, he then heard there had been a Standard or Post put up by, or for the said William Penn, or some other Person who was in Possession before him, with some Brass upon it. And further saith, that there were about ten Families settled to the Southward of Indian River aforesaid, between that and the said Inlett; amongst whom was one Stockely a Magistrate for the said County, then called Whorekill County; one David Jenkins a Constable for the same County, under the Government of the said William Penn; That he has never heard that the Proprietors of Pensilvania, or any Persons pretending Authority under them, ever used any Force or Compulsion to oblige the Inhabitants of Lewes-Town aforesaid, or the People residing to the Southward of Indian River aforesaid, and above the said Inletts, to submit to the Government of the same Proprietors, or to acknowledge them for their Proprietors or Landlords. And further saith, that about 44 or 45 Years ago the Under-Sheriff of Somerset County in Maryland, by virtue of a Writ from the County Court of that County, arrested his Father where he was settled, as the Deponent has above declared, and that his Father refused to acknowledge the Jurisdiction of the said Court, alledging he lived in Sussex or Whorekill County; And that thereupon the said Sheriff departed, and in about a Fortnight after returned, with five Men, and took his Father and tied him; Whereupon four of the Neighbours were sent for, and came there; That a Person standing in the House, named Charles Tindal, said, what will you tie a Man in his own House, and taking a Gun down from a Rack, said, he would clear the House of them: and thereupon his Father was untied; And saith that a Person who was reputed a Man of Substance there, offered to become Bail for his

Father: to which the said Sheriff replied, that if he would go down to St. Martins, he would accept of him for Bail: To which his Father answered, that except he would take Bail, where he had arrested him, he would not give any, for if he had not a Right to take Bail there, he had no Right to arrest him there, and that, afterwards, the said Under-Sheriff and the five Men aforesaid, departed: Which said Under-Sheriff, in about a Fortnight's Time, returned with the High Sheriff of Somerset County aforesaid, and about 20 Men with Arms with him, and seized and bound this Deponent's Father, and the said Charles Tindal, and carried them down to Somerset County aforesaid. And saith that he heard from his Father, and believes, that he was prosecuted in Somerset County aforesaid, and at Annapolis in the Province of Maryland, for not obeying the said Sheriff, which cost him a great Sum of Money; and that in some small time after the said Arrest, the Inhabitants, residing on the South-side of Indian River aforesaid, submitted to the Government of Maryland.

David Hazard, of Maryland, Planter, aged 73, [Lib. B. fol. 239. Int. 20. fol. 240.]

That he has known the Bay and River of Delaware, and the Counties of Newcastle, Kent and Sussex, for upwards of 36 Years past, and has known the Town called Lewes and Indian River in this Interrogatory mentioned, 46 Years, which Town, when he first knew it, was generally called the Whorekill, and the said County of Sussex, when he first knew it, was also generally called Whorekill, and was under the Government of William Penn, Esq; as he was informed: That he cannot say how far the same County then extended to the Southward of Lewes-Town aforesaid, but supposes it extended beyond Indian River aforesaid: because some of the Officers, to wit, a Justice of the Peace, and a Constable for the same County, resided to the Southward of the same River. And this Deponent further saith, that it has been rumoured, as long as he can remember, that there was a Tree, on Fenicks's Island, in which there were Brass Nails drove, as it was said by some Dutch who landed there and claimed it as their Land; and that he was told by an antient Man, of good Credit, named Hugh Tingle, who lived within a Mile or two of Fenicke's Island, aforesaid; That the said Nails were drove into the said Tree in the Form of a Horse shoe, but does not remember that the said Tingle said he ever saw the said Tree. And this Deponent further saith, that, when he first knew the said County of Sussex, there were about half a score Christian Families settled to the Southward of Indian River, near to the same River, and on the Sea-

Coast between the same River and Fenicks's Island aforesaid: which Families were under the Government of William Penn; but the South Bounds of the said County he never knew. That he has never heard that the Proprietors of Pensilvania, or any Persons pretending Authority under them, ever used any Force or Compulsion to oblige the Inhabitants of Lewes-Town, or the People residing on the South-Side of Indian River, to submit to the Government of the same Proprietors, or to acknowledge them for their Proprietors or Landlords; And saith, that he has heard and believes, that one Waples removed from the lower Part of Maryland, and settled on the South-side of Indian River, within the Government of the Proprietor of Pensilvania, as the said Waples apprehended; and that afterwards, the Sheriff of Somerset County in Maryland, with several Men, came to the House of the said Waples, and took him by Force, and carried him back into Somerset County aforesaid. And further saith, that he has heard that Fenicks's Island has been called the False Cape, and by some other Names that he does not now remember.

John Prettyman, aged 62, [Lib. B. Fol. 257. Int. 20. Fol. 258.]

That he has seen several Parts of the Bay and River of Delaware, but is not well acquainted with them, and knows the Counties of Newcastle, Kent and Sussex on Delaware, and has known the Town now called Lewes, and the Indian River, about 43 Years. And saith, that when he this Deponent first knew Lewes-Town aforesaid, it was generally called Whorekill, and the County of Sussex was then also generally called by the same Name of the Whorekill, and was under the Government of the Proprietor of Pensilvania. And that the said Town now called Lewes was formerly in the County called Whorekill, and is now in Sussessex County aforesaid, and this Deponent further saith, that he does not know how far the said County of Sussex extended Southward of the said Town now called Lewes at the Time of his first Knowledge thereof, but believes it extended about 12 Miles to the Southward of Indian River; and the Reason he has for such Belief is, that his Father about 43 Years ago removed from Virginia, and came into the Inlett near Fenicks's Island, and loaded his Goods upon the same Island; and that he this Deponent resided, on the said Island and in the Neighbourhood thereof, for a Month or six Weeks, and heard the ancient People who lived there, say that they lived under the Government of Mr. Penn, and that the Dutch had formerly nailed a Brass or Copper Plate, on a Tree or Post in the said Island, which was then looked upon as the Bound between Penn and Baltimore, and that the said Fenicks's Island

was then generally called Cape Hinlopen or Inlopen. And further saith, that there were divers Christian Families, who lived, between the South Side of Indian River, and the Southern Boundary of the same Country; particularly one John Stokely, who was a Magistrate for the same County, and was also an Assembly Man for the said County, and sat as a Representative thereof, at the City of Philadelphia, and also another Person who was a Constable for the same County; and saith he never heard that the Proprietors of Pensilvania, or any Person pretending Authority under them, ever used any Force or Violence, to oblige the Inhabitants of the said Town called Lewes, or the People residing on the South Side of Indian River to submit to their Government, or to own them for their Proprietors or Landlords; and that he has heard, there were Disturbances made, on the South Side of the River, by Persons who were supposed to act under the Authority of the Proprietor of Maryland, but, as he lived on the North Side of the same River, he can give no particular Account of them.

**Woodman Stockley, aged 53, [Lib. B. Fol. 263. Int. 20. Fol. 264.]*

That he knows the Bay and River Delaware, and the Counties of Newcastle, Kent and Sussex on Delaware, and has known the Town now called Lewes, and Indian River, in this Interrogatory mentioned, upwards of 40 Years, and which Town when he first knew it was by the Inhabitants and People in general called Whorekill. And that the said County of Sussex, since he knew it, was always called by that Name, and that the said Town of Lewes is in the same County. And saith, that the same County, when he first knew it, was under the Government of William Penn Esq; and extended about 20 Miles to the Southward of Lewes-Town aforesaid, but how far to the Southward of Indian River the Deponent cannot tell. That he lived, with his Father, above 40 Years ago, who settled on the South Side of Indian River, under the Government of the said William Penn; but knows of no Marks, that were then the Southern Boundaries of the same County. And this Deponent further saith, that there were then half a dozen Families, to the Knowledge of the Deponent, who lived on the South Side of Indian River aforesaid, and under the Government of the said William Penn; which he well knows, because the People, residing there, attended the Court, for that County, at Lewes-Town aforesaid, some of them as Jurymen, and one John Stokely, his Uncle, who lived there, was a Justice of the Peace for the same County. And this Deponent saith he hath never heard that the Proprietors of Pensilvania ever used any Force or Compulsion, to oblige the Inhabitants of the Town

called Lewes aforesaid, or the People residing on the South Side of Indian River aforesaid, to acknowledge them for their Proprietors or Landlords; but this Deponent hath heard that one of the Sheriffs in Maryland came up from thence, and by Force turned a Man out of Possession of his Plantation, and delivered the same to another Person; and the Deponent further saith, that, when he was young, People used to call the Island, now called Fenicks's Island, (which is upwards of 20 Miles to the Southward of the Cape, at the Mouth of Delaware Bay, and to the Southward of Indian River aforesaid.) Cape Henlopen, and then called the Cape, on the South Side of the Mouth of the said Bay, Cape Inlopen.

**John Anderson, [Lib. B. Fol. 269. Int. 20. Fol. 270.]*

That he knows the Bay and River of Delaware, and the Counties of Newcastle, Kent and Sussex on Delaware, and has known the Town now called Lewes, and the Indian River, in this Interrogatory mentioned, upwards of 20 Years; and saith that ever since he has known the said Town, it has been called Lewes, and the said County, since his Knowledge thereof, has been always called Sussex, in which County the said Town stands; and which Town and County, since he has known them, have been always under the Government of the Proprietors of Pensilvania; and this Deponent further saith, about 6 or 7 Years ago, he the Deponent, conversing with one Charles Bright, since deceased, (at the said Bright's House, and on his own Plantation, in Kent County on Delaware) who was then reputed to be 108 Years old) concerning the said three lower Counties falling under the Government of Maryland, the said Charles Bright then told the Deponent that the Boundaries of Penn's Land was at Cape Hinlopen, on Fenicks's Island, and that he the said Charles Bright had lived on Rumney Marsh, near Fenicks's Island aforesaid, some Years, and had frequently seen the said Boundary, which was engraved with Brass, and that he had often seen and knew the Line that run from the said Boundary, which was West, and that the said Charles Bright then desired this Deponent to take notice of what he had said.

Brickus Townsend, of Maryland, aged 33, [Lib. B. Fol. 246. Int. 20. Fol. 246.]

That he knows the Bay and River of Delaware, and has been in the Counties of Newcastle, Kent and Sussex, but is not well acquainted with them; That he has known the Indian River 10 or 12 Years, and first knew the Town called Lewes about two Years ago, which is in the said County of Sussex. That the said County, ever since he knew it, has been under the Government of the Proprietors of Pensilvania; That the Deponent has

heard his Father say, that old Hugh Tingle told him, there was a Tree on Fenwicks's Island, which had eight Brass Nails drove in it, and was supposed to be a Boundary of the Land to take up the Country. That he knows a Place, on Fenwicks's Island, to the Southward of Indian River, which he has commonly heard called Cape Hinlopen, and to the rest of this Interrogatory cannot depose.

James Sangster, aged 58, [Lib. E. Fol. 42. 10th additional Int. Fol. 42.]

That the first Christian People who, he has heard, settled the said Counties of Newcastle, Kent and Sussex were Dutch; That he never heard the said County of Sussex called by any other Name. That as he was travelling up, from Virginia, hither [to Maryland] with his Mother, she shewed him a marked Tree, near an Indian Town, at the Head of a Creek called Assawaman, which empties itself into a small Bay or Sound, a little to the Northward of a Place called Fenicks's Island, and said, that was a Boundary between Maryland and Pensilvania. That the said County of Sussex was, as he has heard, formerly under the Government of New York, and he never understood any Part of it was under the Government of Maryland, (except what lies between the South Side of Indian River, and the North Side of Assawaman Creek aforesaid;) That the Lands, lying, between the said Creek and River, were settled and possessed by some Families under the Proprietors of Pensilvania, until one Peter Waples, an inhabitant of Somerset County in Maryland, about 45 or 46 Years ago, fled from thence for Debt, and settled himself on a Place called Piny Neck, near the South Side of Indian River aforesaid, supposing he was, then, out of the Limits of the said County of Somerset: That, afterwards, the Sheriff of the same County came up, with a Number of Men, took him from thence by Force, and carried him to the Prison of Somerset County aforesaid; That afterwards, one Whittington, who was Surveyor of the same County, as he has heard, came up, surveyed many of the Lands, between the said Creek and River, and dispossessed those that were settled on them under the Proprietors of Pensilvania, particularly one John Stokely who, at that Time was a Justice of the Peace for Sussex County aforesid.

William Burton, of Maryland, Planter, aged 62, [Lib. E. Fol. 32. Int. 2. Fol. 32. and 10th additional Int. Fol. 33.]

Says that he has resided in the County of Sussex and in Maryland for 48 Years past, and that he has heard that the first Christian People who settled the said Counties of Newcastle,

Kent and Sussex, were Swedes and Dutch; and understood, from some Writings which he has seen, that the said County of Sussex was formerly called Dale: and Delaware Bay aforesaid was called Wilk, by the Province of New York; That the said County of Sussex extended Southward to a Creek called Assawaman, about 9 Miles to the Southward of Indian River, and about 25 Miles from Lewes-Town; That he has heard the said County of Sussex, before he came hither, was under the Government of York: but, since, it has been under the Government of Pensilvania; and to his Knowledge the same, or any Part thereof, (except what lies to the Southward of the Indian River) never was under the Government of Maryland; which Part to the Southward of that River, has been under that Government about 45 Years; That about 45 Years ago he was informed, that one Peter Waples, who lived in Somerset County, fled for Debt from the Place of his Abode, to the South Side of Indian River, and settled within five Miles of the Place where the Deponent then lived, supposing he was, then, out of the Limits of Somerset County; That the Sheriff of that County, with about half a dozen Men came and took him, from thence, by Force, and carried him into Somerset County; That soon after this, one Colonel Whittington, being Sheriff of Somerset County aforesaid, came to one John Petijolius, who lived on the South Bank of Indian River, and demanded Taxes of him, which he refusing to pay, the said Whittington distrained some of his Cattle for them, which Things, and some others of the like Nature, so frightened the People to the Southward of Indian River, (which were about 8 Families) that they were obliged to submit to the Government of Maryland, and that most of the Lands which were held by them, under Grants from the Proprietors of Pensilvania, were, after, taken up under the Government of Maryland, and particularly 900 Acres by the said Whittington; and has also heard that Part of those said Lands had, before then, been taken up under the said Government of Maryland; whereupon those People, and the Inhabitants of the said 3 lower Counties, refused to pay any Quit Rents to the Proprietors of Pensilvania, as this Deponent has been informed. That one John Stokely, who was Master of one of the 8 Families aforesaid and who had acted as a Magistrate, in Sussex County aforesaid, after the Submission as aforesaid to the Government of Maryland, accepted of the Commission of a Magistrate under the said Government, and acted thereby in the said County of Somerset.

William Burton, of Maryland, aged 62, [Lib. E. Fol. 32. 11th additional Int. Fol. 38.]

Who has before deposed that he has resided in Sussex County

and in Maryland for 48 Years past, says, That he neither knows nor ever heard, that the Proprietors of Maryland, or any of them, were ever in the Possession of the said Lands now called Newcastle, Kent and Sussex on Delaware, or any Part of them, (excepting in the Lands aforesaid to the Southward of Indian River aforesaid, and a Fort about Christiana, in Newcastle County aforesaid) nor does he know, has heard, or believes, that they or any of them, or any Person under their Authority ever exercised any Jurisdiction, or held any Courts, in the said County of Sussex, nor has he ever seen any Record, or publick Minument, or Writing, purporting any such Jurisdiction, or Courts, held by them, or their Authority, within any of the said Counties.

James Sangster, aged 58, [Lib. E. Fol. 42. 13th additional Int. Fol. 46.]

That he formerly following Whaleing, and thereby became acquainted with the Sea Coast, from the Entrance of Delaware Bay down to the Southward of Fenicks's Island, but has never been very far in the Sea from it; That he observed in foggy Weather, at Sea the said Island had the Appearance of a Cape, which, as he apprehends, is occasioned by Assawaman Sound, which joins to it, but as it is approached nearer, it alters its Form, and does not appear to be a Cape. That he has heard that Fenicks's Island aforesaid, at the first Settlement on Delaware Bay, was called Cape Henlopen; and that it has been called by one or other of those Names ever since; which Island he apprehends, lies 30 Miles to the Southward of the Southern Cape at the Mouth of Delaware Bay; which last mentioned Cape he has heard one Alexander Molleston, an ancient Dutch man, who lived near the same, and one Cornelius Wilbank, about 48 Years ago, say, was called by the Name of Cornelius, and by others, about the same Time, it was called Cape Inlope; That ever since, has been called sometimes by one of those Names, and sometimes, by the other, but by the greater Number it has been called Cape Inlope.

William Burton, of Maryland, aged near 62. [Lib. E. Fol. 32. 13th additional Int. Fol. 40.]

That he has never been at Sea, but has been in a high Wood of about 100 Acres on Fenicks's Island, and on the Sea Coast, which he has been informed by Sailors, has the Appearance of a Cape from the Sea: but as it is approached, that Appearance vanishes, and there is no Cape at all; That it is by some People called the False Cape, and by others Fenicks's Island; he never heard it called by any other Name until he saw the printed Plan or Map, mentioned in the late Agreement, between

the Proprietors of Pensilvania and Maryland, by which it is called Cape Hinlopen; That he never heard the Place called Cape Cornelius in that Map, called by that Name until the Proprietor of Pensilvania arrived in that Province, about 40 Years ago. And has heard his Father say, that the same Proprietor then called it by that Name, but before that Time, as he ever understood, it was called Cape Henlopen.

DEPOSITIONS FOR THE DEFENDANT. WITH SOME OBSERVATIONS THEREON.

And first, as to such of our Witnesses as he cross-examined in order to disqualify themselves, as interested Persons.

1.

Samuel Preston,

Our Commissioner, the Defendant examined to a vast Number of Interrogatories on his own part, as to the Matters in question; so that he is an unquestionable good Witness on our part.

James Logan, our Commissioner, the Defendant cross-examined only as to his Interest, [Lib. H. fol. 99. Int. 1. fol. 100.]

But he answers, precisely in the Words of their Interrogatory, That he is not immediately, or mediately, concerned in the Event of this Suit; nor does he hold, possess or claim any Land, in dispute between the Plaintiffs and Defendant in this Cause, either in the three Lower Counties called Newcastle, Kent, and Sussex, or within the Province of Pensilvania or Maryland.

The Defendant thought this Gentleman (who had once heretofore, gone thro' so many Offices) must needs have some Interest in the Lands in question, therefore he examined one or two Witnesses as to Mr Logan, viz.

Samuel Preston, [Lib. H. Fol. 104. Int. 22. Fol. 116.]

That from 1701 to 1732, James Logan, and some others whom he does not remember, were Principal Managers and Chief Agents in Pensilvania and the three lower Counties, for Mr. Penn and his Family; and had the Power of granting and settling Lands in those Places; and that James Logan was the Principal Actor in the said Affairs.

This is the very thing Mr. Logan himself declares, and it is that which gave him so large a Knowledge, to depose so fully to the several Affairs he speaks to; but that does not disqualify him from being an Evidence now, even if

he had held all those Offices still; whereas, he swears he laid them all down, when he came to be President of the Council there; from which last Office he was relieved, by the present Governor.

John Taylor, the Defendant's Witness, [Lib. H. Fol. 95. Int. 3. additional Fol. 98.]

Has heard and believes that Andrew Hamilton and James Steel, do hold Lands in Kent County, under the Plaintiffs; but says he never heard that James Logan holds, or claims, or has lately held or claimed, any Lands, either in the Part in dispute in this Cause, or in any of the three Lower Counties.

So that Mr. Logan, who knows a vast deal, by having gone thro' all those publick Stations, and who swears that he has now laid down all Officers, and has no sort of Interest, is a clear unexceptionable Witness for Us.

Andrew Hamilton,

Another of our Commissioners, we have examined, only as one of the Commissioners for carrying the Articles into Execution, as to what past at the Execution of the Commission; and to no kind of thing whatever else. Yet him the Defendant cross examined, as to his Interest only, viz. [Lib. H. Fol. 128. Int. 1. Fol. 129.] And he says that he holds Lands in Newcastle and Kent Counties, two of the three Lower Counties, which Counties he understands to be in dispute in this Cause. That the Lands in Kent County, which he holds, were originally granted under the Duke of York, to some of the Soldiers who served at the taking of New York and Delaware, in Consideration of such Service, as appears by the said original Grants, and have been since confirmed by Mr. Penn to their Descendants. That the Lands which he holds in Newcastle County were claimed by one Augustine Harman, under a Right from one of the Ancestors of the Defendant, and by one Green, under a Right from the Plaintiff's Father. Both which Rights were vested in one Mathias Vanbeeber, who sold the same to this Deponent. And this Deponent further saith, that he firmly believes that he shall neither be a Gainer, or Loser, by the Event of this Cause.

We hope this does not disqualify Mr. Hamilton, who is only a Witness as a Commissioner, and, as such, is a very material one.

**James Steel is our last examined Commissioner, and is also examined by Us as to our receiving Quit Rents, and to many other Points. The Defendant cross-examined him as to his Interest, [Lib. H. Fol. 93. Int. 1. Fol. 94.]*

And he says he does not know that he is any way interested

in the Event of the Cause, unless his holding Lands in two of the three Lower Counties shall be interpreted so. And further he affirms and says, that he holds and possesses several Parcels of Land, under the Plaintiffs, in Newcastle and Kent, by ancient Grants.

So much as to our four living Commissioners.

2.

Secondly, As to some of our other Witnesses, whom the Defendant has cross examined as to their Interest.

**John Anderson, Farmer, [Lib. H. Fol. 51. Int. 1. Fol. 52.]*

Does not apprehend himself to be any way concern'd in the Event of this Cause; Tho' he holds some Lands in Kent County under the Plaintiffs, yet conceives that, if the said Counties should fall to the Lord Baltimore, he should still keep his Possession.

John Ball, Blacksmith, [Lib. H. Fol. 18. Int. 1. Fol. 18.]

Does not know that he is interested in the Event of this Cause, but that he is in Possession of a Tract of Land in Newcastle County, the Right of which he has conveyed by Deed to his Son; but that he has his said Son's Promise, that he shall enjoy it during his Life: That his said Land is held under the Plaintiffs. He further says, that he claims a Tract of Land, of Land, under the Defendant, which he believes, lies within the Limit in dispute between the Parties.)

So that, we hope, this Witness is a good one for us, since he is, at least, equally concerned, or more, under the Defendant, than under us.

**John Garretson, Farmer, [Lib. H. Fol. 17. Int. 1. Fol. 17.]*

Is not, to his Knowledge, any way interested in the Event of this Cause, tho' he holds, possesses and claims a Tract of Land whereon he lives, under the Plaintiffs, situate in Newcastle County, within 3 or 4 Miles of Newcastle Town.

James Hendricks, Carpenter, [Lib. H. Fol. 125. Int. 1. Fol. 125.]

Believes he is no way interested or concerned in the Event of this Cause. Neither claims or possesses any Lands in dispute between the two Proprietors, or in any of the three Lower Counties. So the Defendant himself cross examined him to the Merits.

Samuel Hollingsworth, Farmer, [Lib. H. Fol. 29. Int. 1. Fol. 30.]

Does not apprehend himself to be any way interested in the Event of this Suit, nor holds, nor claims, any Lands that he believes to be in dispute in the Cause. So the Defendant went

on and cross examined him to a great number of Interrogatories to the Merits.

Thomas James, Pilot, [Lib. H. Fol. 12. Int. 1. Fol. 12.]

Is not any way concerned in the Event of the Cause, nor holds any Lands in dispute between the Parties. So the Defendant went on and cross examined him to the Merits.

Mark Manlove, Farmer, [Lib. H. Fol. 24. Int. 1. Fol. 25.]

Does not conceive that he shall be any way interested or concerned in the Event of the Cause; but he holds and possesses Part of several Tracts of Land in Kent County. [He does not say under whom.] The Reason why he conceives himself to be disinterested in the Event of the Cause is, because he expects to be quieted in his Possession, whoever gains it.

Elizabeth Morris, Widow, [Lib. H. fol. 26. Int. 1. fol. 26.]

Is no way interested in the Event; neither holds nor claims any Lands in dispute between the Parties to this Cause. So the Defendant cross examined her to the Merits.

Elizabeth Murphy, Widow, [Lib. H. Fol. 126. Int. 1. Fol. 127.]

Is not any way concerned in the Event of the Cause, nor holds any Lands within the Limits in dispute between the Parties. So the Defendant cross examined her to the Merits.

John Musgrave, Farmer, [Lib. H. fol. 34. Int. 1. fol. 35.]

Does not think himself any way interested, or concern'd in the Event of the Cause. And holds or claims no Lands, that he apprehends lie within the Limits in dispute between the Parties. So the Defendant cross-examined him upon a great Number of Interrogatories to the Merits.

Thomas Noxon, [Lib. H. fol. 92. Int. 1. fol. 92.]

Believes he is not any way concerned in the Event, but says, he is possest of some Lands in Newcastle County, that he claims under Grants from the Government of New-York, dated about the Year 1671, and holds or claims no Lands by any Grant or Right from the Proprietors of Pensylvania, or any of their Ancestors; And, therefore apprehends his Title cannot be affected by the Event of this Cause.

William Peterson, of New Jersey, Farmer, [Lib. H. fol. 7. Int. 1. fol. 8.]

Is neither directly or indirectly concerned in the Event of the Cause, and neither holds or claims any Lands in dispute in the said Cause. So the Defendant went on, and cross-examined him to the Merits.

John Prettyman, Farmer, [Lib. H. Fol. 49. Int. 1. Fol. 50.]

Does not apprehend himself to be any way interested in the

Event, but holds a Tract of Land on the South Side of Indian River, under the Defendant, and a Tract of Land on the North Side of the said River in Sussex County, under the Plaintiffs. So that this Farmer, we think, is an equal indifferent Witness.

John Rambo, of New Jersey, Farmer, [Lib. H. fol. 19. Int. 1. fol. 20.]

Is not any way interested in the Event of this Cause, nor holds any Lands within the Limits in dispute between the Parties. So the Defendant went on, and cross-examined him to many Points on the Merits.

John Hans Steelman, Indian Trader, [Lib. H. fol. 127. Int. 1. fol. 128.]

Is no way interested or concerned in the Event of the Cause, and does not hold or possess any Lands within the Limits in dispute between the Parties, or in the three lower Counties.

**Wooman Stockley, Farmer, [Lib. H. fol. 50. Int. 1. fol. 51.]*

Does not expect to be either Gainer or Loser by the Event of the Cause, but holds some Lands, in Sussex County, under the Plaintiffs.

**William Till, Merchant, [Lib. H. fol. 124. Int. 1. fol. 124.]*

Does not apprehend he is any way interested in the Event or Issue of the Cause, but that he holds Lands in Sussex County under the Plaintiffs.

**William Waples, Farmer, [Lib. H. fol. 49. Int. 1. fol. 49.]*

Does not know whether he is interested, or not, in the Event of the Cause, but holds Lands under the Plaintiffs in Sussex County.

Joseph Woods, Carpenter, [Lib. H. Fol. 4. Int. 1. fol. 4.]

Is no way interested in the Event of this Suit; nor does he possess or claim any Lands in dispute in the Cause. So that the Defendant went on and cross-examined him to several Points relating to the Merits.

So that,

**James Steel, *John Anderson, *John Garretson, *Wooman Stockley, *William Till, *William Waples*

Have, as often as they are respectively named in the State of our Depositions, an Asterism or Mark* set before their Names, as liable to the fore-mentioned Doubt only. And they are such Witnesses, as that the Loss of any of them will not be fatal, except as to Mr. Steel, who proves the receiving Quit-Rents by us, and even as to that, and indeed as to every other Point, the Defendant's own Witnesses have most abundantly supplied our Proof, and confirmed it, in the strongest and fullest manner.

NOTE—As the Defendant would have our Agreement to be (at the best) a meer voluntary Agreement, without any Consideration whatever moving from us, and insists, that his Charter comprizes every thing which we granted him by the Articles, we shall be obliged to debate the Extent of the Charter for Maryland: for altho' Pensilvania is granted in express Terms from the Beginning of the 40th Degree, yet, if the Maryland Charter, which was long prior, is to be expounded not by the Landmarks (which it expressly bears in it) but by Degrees, and those too, such Degrees as are now discovered and known, and that Lord Baltimore is intituled also to the every Extent of the 40th Degree, compleat, as now known and found out, and that all this is quite clear, and beyond Possibility of a Doubt, why then, indeed, we have granted him no Territory at all, and the Agreement may be said to be without any Consideration, save this, That it was to end a continued expensive Contest, which had subsisted for full fifty Years together, almost to the ruin of the Parties; and which had hindred also the publick Good, as it stopt the Settling so fine a Colony; And which Considerations alone, might be good, to intitle us to Relief, and the Assistance of a Court of Equity, to carry the Agreement into Execution.

But, on the other hand, if it shall come out, as clear as the Sun, that we have, in this Agreement, granted to him an exceeding large Tract and Territory, Part of our own Province of Pensilvania, above all the Landmarks of his Charter, above every Part of the Peninsula, above the Isthmus thereof, above what was at the time of his Charter known to be the 40th Degree, and above every one of his own successive Claims and Encroachments, from time to time: yea, many Miles above the highest of all his most extravagant Demands, why then, there is every way, such a good, real, and valuable Consideration given, on our Parts, that this can, in no legal Propriety, be called a voluntary Agreement, or an Agreement without Consideration.

3.

The Defendant cross-examined two of our Witnesses, to know if Observations had not been taken at Philadelphia, and where the 40th Degree fell?

John Musgrave, [Lib. H. fol. 34. Int. 8. fol. 37.]

Has heard that there have been Observations formerly made at Philadelphia, and at the Head of Elk River: but knows nothing of the Particulars thereof.

Benjamin Eastburn, [Lib. II. fol. 117. Int. 8. fol. 118.]

Has been informed, that some Persons, several Years ago, made Observations in Philadelphia, in order to discover its Latitude. And this Affirmant has, likewise, made some Observations, for the same purpose. And, according to the best Judgment he can form from his Observations, he believes, that the Market-Street in Philadelphia, does not lie so far North as the Latitude of 40 Degrees compleat, but near to the Northernmost Part of the said Degree. But, as Astronomers differ, among themselves, concerning the Places of the Heavenly Bodies their Declinations, and the Latitude of the Stars, and proper Allowances for Refractions, it is almost impossible to determine the exact Latitude of any Place, with the best Instruments: And as the Instruments, chiefly made use of by the Affirmant, on this occasion, were made by himself, and very imperfect, he cannot take upon upon himself to speak certainly of the Latitude of any Part of the Street aforesaid: And says, that he has heard, and believes, that the Surveyors, appointed by Commissioners, in pursuance of an Order of the King in Council, about the Year 1733, to lay out the Northern Neck in Virginia, did differ, about the Latitude of one Place in the said Neck, fourteen, about another, fifteen, and a third, seventeen, Geometrical Minutes [which is very near 20 Miles.] And that his information was from John Warner, one of the Persons employed to make the said Observation.

What pretty Work this would make, in explaining the King's Grants by Degrees (especially when there are certain Landmarks in a Charter?) And what a hopeful Account has the Defendant given, by his own Examination of this Witness, of the absolute Incertainty of Degrees, even now?

4.

Next, My Lord examined some Persons, Dependants upon him, to give their Construction and Opinion, as to the Extent of the Charter for Maryland.

Colonel Thomas Colvill, of Maryland, aged 50, [Lib. II. fol. 120. Int. 3. add. fol. 122.]

Has seen the River Delaware at Newcastle Town, and believes it's there, about two Miles wide. And is, at the City of Philadelphia, he believes, about a Mile wide. That the Tide water flows and ebbs, both at Newcastle and Philadelphia and, as he believes, twenty Miles higher. Knows not whether the Water at Philadelphia be salt, brackish, or fresh.

It may be so, as this Maryland Witness of my Lord's says;

but, does it approach to the other Water, to make an Isthmus? No. We prove, that, from our Isthmus, the Waters greatly diverge, both upwards and downwards.

Thomas Hynson Wright, of Maryland, Esq. a Surveyor, and the Defendant's Witness only, aged 52, [Lib. G. fol. 251. Int. 7. fol. 255.]

That he hath some little Knowledge in the Art of Surveying, and that he hath studied the same for about 30 Years last past: and that the Reason of his studying the Art aforesaid, was to qualify himself for the Office of Surveyor, and accordingly, in September 1720, was appointed Deputy-Surveyor of Queen Anne's County in Maryland, which Office he held, until he laid down the same of Choice. And saith, that he hath looked upon the Exhibit, markt No (1.) (which is afterwards said to be a Copy of the Bounds in my Lord Baltimore's Charter) and read and considered the same; And that he is of opinion, all the Land, lying on the North of a Line, drawn East from the Promontory or Point called Watkins Point, unto the main Ocean, and with the main Ocean and Delaware Bay* to the Extent of the 40th Degree of Northerly Latitude, and from thence, by the Degree aforesaid, to the Fountain of Potomack, mentioned in the Exhibit aforesaid, and, from thence, by the West and South Side thereof to Chesapeake Bay, and, from thence, by a strait Line, to the Promontory or Point, called Watkins Point as aforesaid, are included within the Limits of the Charter in the Exhibit aforesaid, mentioned. Saith that, having resided in Maryland, from his Infancy, and travelled thro' the greatest Part thereof, is pretty well acquainted with most Parts of the Eastern Shore; and that he is of opinion, the three lower Counties aforesaid are within the Boundaries or Buttals in the Exhibit aforesaid mentioned, because, the Expressions in the said Exhibit are clear and plain, to any Capacity, excepting that of the 40th Degree; and that, would be improperly applied, to any other Place than the Extent of the Degree; for that, until it comes to the Extent of the 40th Degree, it would be only 39 Degrees, 59 Minutes, and so many Seconds.

NOTE—This Surveyor is a very bad Expounder of the King's Charters; and he is, either a great Quibbler upon Oath, or else, a most wretched Mathematician; for, with his Leave, 39 Deg. 59 Min. is under the 40th Degree; and so is 39 Degrees 1 Minute; and every single Hair's Breadth, from 39 compleat to 40 compleat: altho' none of them are to the Extent of the 40th

* He does not pretend to go up Delaware River: for he can find no such Word in the Charter: and yet, goes to the Extent of the 40th Degree.

Degree compleat. I could wish he were here, to answer one plain Question, viz. Under what Degree is any Place, that lies 30 Minutes North from the Equator? Is it not under the first Degree, altho' it is not to the Extremity of that first Degree compleat? This I would illustrate further, by asking him, Under what Degree 90 Min., or 110 Min., North from the Equator, is? Would he say, they are under the first Degree? If so, he makes more than 60 Min. to a Degree: and it's evident, to common Sense, that they are under the second Degree, for they are beyond the Extent of the first Degree, and, therefore, cannot be in, or under, that.

William Rumsey, of Maryland, a Surveyor, the Defendant's Witness, aged 42. [Lib. G. fol. 129. Int. 7. fol. 130.]

That in or about 1716, he began to study Geometry, Trigonometry, Plain and Mercator Sailing, and in 1724 he was made Deputy-Surveyor of Cecil County aforesaid, and has acted in that Station ever since, and saith he hath studied some other Branches of the Mathematicks, as Spherical Trigonometry and Dialling; but, as he had not a regular Education, he looks upon himself to have, in relation to them, but a superficial Knowledge and further saith, that the Exhibit, No (1.) he has read and considered; and that he is of opinion, that all the Land lying under the 40th Degree of North Latitude between the Bay or River* Delaware, and the Meridian of the first Fountain of Potomack River, is within the Limits of the Charter; unless the 40th Degree of North Latitude should intersect the aforesaid River of Potomack, before it reaches that Meridian; And all the other Lands, lying under the 40th Degree of North Latitude are excluded thereout. Saith, that he is well acquainted with divers Parts of Maryland, being born, and having lived most of his Life-time, therein. Saith, that he has been acquainted with the three lower Counties, about 17 Years, where his Business has frequently called him; Saith, that he apprehends, that all the three lower Counties aforesaid, are within the Limits of the Charter aforesaid. That the Reason of such his Opinion is, because the said three lower Counties are a Part of the Peninsula in the Charter mentioned, lying to the Southward of the 40th Degree of North Latitude.

NOTE—This Man contradicts the Fact admitted in fol. 13. of my Lord's Answer: where my Lord expressly admits that the three Lower Counties lie in the Peninsula, and also, above the Peninsula, within the Main Continent; for this Witness says they are all a Part of the Peninsula. So that

* Where has he got the Word River? There is no such in the Charter.

we are in a fine Case; First, my Lord admits a Fact, to draw us into a Reliance and Dependance upon it, and then he examines this, and many other Witnesses, to disprove his own Answer.

And another partiular Error of this Witness is, that he is looking to the 40th Degree as now known (108 Years after the Time of my Lord's Charter) whereas, if he were to go according to the Degree at all, it should be the Degree as then known.

But the greatest Opinions have, unanimously, been, that my Lord's Charter is to be expounded according to the Landmarks, and not any imaginary Points in the Heavens, the Uncertainty whereof the Defendant himself has given such an Account of.

Hugh Jones, of Maryland, Clerk, the Defendant's Witness, aged 49, [Lib. 6. fol. 4. Int. 7. fol. 5.]

That he has been conversant in the Mathematicks, and esteems himself, in some measure, skilled in them; That he learnt Arithmetick at School, studied Geometry, Geography and Astronomy in the University of Oxford: where, having taken the Degrees of B. A. and M. A. he was recommended, by the then Principal of the College, Doctor Win, Bishop of St. Asaph, to Doctor Robinson, then Bishop of London, who advised the Deponent to perfect himself, as well as Time would allow, in the Mathematicks, for that his Lordship intended to send him over to the Colledge of William and Mary in Virginia, as Professor of the Mathematicks. That, thereupon, the Deponent applied himself to the Study of Algebra (which he had not applied himself to before) under the Instruction of Mr. Hudson of Christ-Church, and was admitted Professor of Mathematicks in the Colledge of William and Mary aforesaid, in the Year 1717, and continued studying and teaching the Mathematicks there till 1721. and has made it his occasional Study ever since. Says he has lookt upon the Exhibit No 1, and has read and considered the same; and, according to the best of his Understanding and Judgment, All the Lands, between the Tide Water *1 of Delaware, and the Meridian of the first or Westernmost *2 Fountain of Potomack, lying under the 40th Degree of Northernly Latitude from the Equinoctial, that is, at the Distance of 2400 Minutes from the Terrestrial Equator. *3 are within the Limits and Bounds mentioned in the Exhibit aforesaid. That he has been, often, in 10 of the 12 Counties of Maryland, and knows several Places in each of them, and has known the same about 20 Years: 14 of which he has resided in Maryland. That he has known the County of Newcastle about 8 Years, but is

unacquainted with Kent upon Delaware and Sussex. That, for upwards of 8 Years last past, he has been Minister of a Parish, contiguous to Newcastle County, and has had frequent Occasions to go to Newcastle. Further declares, that, to the best of his Judgment and Understanding, all and every Parcel of the three Lower Counties are contained and included within the Limits and Bounds specified in the Exhibit; and saith that the Reasons for his Judgment concerning the Extent of the Charter to the said Distance from the Equator, are (1st) Because, to him, it seems located where New-England ends. *4, and Smith, in his General History, published before, and Ogilby, in his America, printed after the said Charter, both agree, that no Part of New-England could come more to the Southward than 2400 Minutes North of the quator *5; 2dly, The different Cases of the Words Sinus and Æstuarium; the first, used in respect of Chesopeak, and the latter, in relation to Delaware; for, had the Northern Limits been intended to have stopped short of the 40th Degree compleat, it might have been in a Part of Delaware as much as Sinus as Chesopeak is; And the Reason why he conceives all the three Lower Counties to be within the Limit aforesaid, is because, from Observations taken, and Lines run, by himself and others, and Knowledge of the Situation of the Places, he is fully convinced, that the most Northern Part of Newcastle County (the most Northerly, of the three) (supposing Newcastle County not to extend more Northerly than 12 Miles North of Newcastle Town) is, at least, seven Minutes to the Southward of the said 40th Degree *6.

NOTE—This is the very Person, who with his self-esteem'd, but false Reasoning, has infected Lord Baltimore, and made him fly off from his Agreement; and, therefore, we may expect to hear his Arguments enforced against us. But he has made several great Blunders in his Opinion.

1. He takes all the Lands between the Tide-Water of Delaware and the Fountain of Potomack; but why the Tide-Water? He afterwards tells us, that the Word Sinus is used as to Chesopeak, and another different Word, Æstuarium, as to Delaware. He does not, indeed, give us his Construction of Sinus, but that's wholly immaterial, as no Part of Chesopeak Water was mentioned for the Northern Boundaries. And the only material thing is this Æstuarium of Delaware, which, I am sure, the Crown did not intend should be the Tide-Water of Delaware, because had he lookt a little further, he would have found that the Crown itself has, in the very Body of the Charter, called it Æstuarium de Delaware vocat Delaware Bay. Now we have proved, by a Number of Witnesses, that the

Head of Delaware Bay ends at Bombey's-book, a great way below Newcastle; whereas, they have got a single Witness, who believes the Tide-Water flows 20 Miles above the City of Philadelphia,) which is really above 60 Miles more North than Bombey's-book, and which 60 Miles at a Touch, this Witness gets, only by striking out of the Charter the English Word Bay, and inserting in it a Word, which he likes better, Tide-Water.

2. This Witness makes another very kind Construction for his Patron, of the King's Charter; for he says, all the Lands from the Tide-Water of Delaware, to the Meridian of the first or westernmost Fountain of Potomack; which is saying, to the first, or to the furthest and last Fountain. For the Charter begins with granting the most Eastern Lands first, (the Part of the Peninsula) and then proceeds and grants on to the Westward, to the Meridian of the first Fountain. But this Witness is right, for his Patron, he knows it will grant more, if it goes on and grants quite to the westernmost Fountain and therefore he has again inserted Words into the Charter of the first (or westernmost) Fountain. I know my Lord's Western Bounds do not affect us, but this abundantly serves to shew the Willingness of the Witness, and his Inaccuracy too, even when on his Oath; so that no regard ought to be had to his Opinion, who, if he can't find, will yet make and add Words, to favour his Intentions, and his Patron.
3. Having a very bad Argument to maintain, he affects to use very obscure and improper Terms, in order to confuse the Matter, even so as to talk very near to Nonsense. He says all the Lands lying under the 40th degree, that is, at the Distance of 2400 Minutes, are within the Limits and Bounds. If he means that it is not the Degree, nor under the Degree (as some of his fellow Witnesses contend) until that Degree is compleat, (and it certainly is compleat at the 2400 Minutes from the Equator) then, all these Lands, lying under the 40th Degree compleat, are no Lands at all; for the imaginary Line of 40 is an indivisible Line, without any Space or Width in it. What can he mean then, by the Lands lying under the 40th Degree, and yet, at the Distance of 2400, at which Distance they are not under, nor can possibly be under, the 40th Degree? I know what he means, and will tell you, and it's plain that he chose and affected to speak in these dark obscure Terms, because, if he puts his Argument into a clear Form of Words, the Fact, upon which it

depends, glares him in the Face, and destroys his Argument in one Moment. He unquestionably means this. All the Lands South of 2400 Minutes North from the Equator, or South of that 40th Degree which is compleat at the Distance of 2400 Minutes North from the Equator, are within my Lord's Charter. Had he used these Words, they carry a very clear Proposition in them, and necessarily imply another, more short and more clear, that the whole Space of the 40th Degree was granted to Lord Baltimore; which brings, it to a Fact that that whole Degree was granted to Lord Baltimore; whereas I contend, that it was not, it could not, and it was not intended to be granted to him, for it was, before, most precisely, granted to the Council of Plymouth for the ruling of New England, and my Lord's own Patent declares in express Terms, that his Province was to go to the Place where New England ended.

4. As to his first Reason for his Opinion, because it seems, to him, that Maryland was located where New England ended, we contend, it not only seems so, but is exprest, as clearly as Words can express, that it really was located where New England ends, and that is what we rely on.
5. He has a second Reason; for he says, that Smith and Ogilby both agree, that no Part of New England could come more Southward than 2400 Minutes North of the Equator. I have lookt, pretty well, into Smith and Ogilby both, and don't find that either of them agrees to any such matter. But, if they did both agree it, I am very sure of two things; 1st, That Smith, who originally printed his Book in the Year 1612, (and Ogilby afterwards copied from him) did not mean 2400 Minutes, as one Mr. Jones should observe, or judge them to be, 128 Years after he writ, viz. now in the Year 1740. And, 2dly, That the King's Charter, under the Great Seal, disagrees both with Smith and Ogilby; for that Charter to the Council of Plymouth grants, in plain English Words, from 40 Degrees to 48 Degrees inclusively; whereas any such Expression of Smith and Ogilby would make it exclusively.
6. As to his Reason for saying, that all and every Parcel of the Lower Counties are included in Lord Baltimore's Charter, had he studied that Charter well, and, with it, my Lord's own Answer, he might have found much better Reasons to the contrary. For, 1st, The Lower Counties were culta. 2. My Lord had (as to this Matter) only a Part of a Peninsula, and admits upon his own Oath, that some of the Lower Counties lie out of that Peninsula,

for that they are up within the Main Land and Continent, 3. My Lord was bounded on the East only by the Ocean, not so much as by the Bay or River, (much less by the Tide-Water) of Delaware. 4. He was to go from his South Bounds, usque ad such Part *Æstuarii* de Delaware, vocat, Delaware Bay, quæ subjacet the 40th Degree. And, 5th, Were he to go by the Degree (which he was not) and were he to go to the 40th Degree compleat (which he was not neither) yet, it must not be the Degree which this Witness has found out now in 1740, but the Degree as known then in 1632. And that, as my Lord himself fixt it, by his own Book and Map, printed and publisht in 1635, three Years after his Charter, and after he had actually made his Settlement in the Country, and got acquainted with it, was, precisely, at the Head of Chesopeak Bay; whereas this Witness's modern Observation, makes it, now, full 26 Miles and 3 Quarters more North than it was esteemed to be then.

These are my poor Thoughts and Observations, who never learnt Algebra, or any other Part of the Mathematicks.

And I can't omit one Observation upon this Witness. He swears he is Minister of a Parish contiguous to Newcastle County; so that, should my Lord, by the Help of his Opinion, extend his Province, this Witness will naturally extend his Parish: no small Temptation to a Minister of Maryland, where, as I observe by the 16th Page of the Maryland Law-Book (proved in the Cause) the Minister is intitled to a very large yearly Allowance, of no less than 40 Pound of Tobacco per Poll, on the taxable Inhabitants (which are almost every Person, Servants and Slaves) within his whole District; so that the County of Newcastle, with about 11 or 12,000 Persons in it, would make a fine Addition to Mr. Jones's contiguous Parish, as well as to my Lord's Province.

But, for an absolute Answer to this Witness's Opinion, I would apply the solemn Order of Council, made upon Lord Baltimore's own Petition, and after many Hearings by Council, in the Year 1685, declaring that the three Lower Counties were not granted to Lord Baltimore, and ordering a Line to be run to divide them off, in very emphatical Terms, to the 40th Degree. Which Order was also, several times afterwards confirmed.

And I would also apply the Opinions of Sir Clement Wearg, the present Lord Chief Justice Willes, and the present Lord Chancellor Hardwick, all of which, I presume, were

far better Expositors of the Charter of the Crown, than this Mr. Hugh Jones is; and who unanimously agree that the Landmarks, and not imaginary uncertain Points in the Heavens, were to be his Boundaries.

There is another Observation, too material to be omitted. My Lord has examined a Witness of his own only, one John Miller, (who will be mentioned by and by under another Head) and he has told us, not where the 40th Degree, according to modern Observations, is, (which would have been exceedingly material for my Lord Baltimore to have shewn, who insists that he has a Right to go to the 40th Degree compleat) but he has told us the Latitude of our Cape Cornelius, and that it is in 39 Degrees and 5 Minutes. Now if we should believe this single Witness of my Lord's, and should also agree that my Lord is to go quite to the 40th Degree compleat, even as now sworn to by that Witness. What would be the Consequence of that? Why the Consequence is, that the Line given my Lord by the Articles, is 66 English Miles above that Cape Cornelius; and Cape Cornelius itself is 5 Minutes, which is 5 English Miles and $\frac{8}{10}$ ths above the 39th Degree; so that we have granted to my Lord 71 English Miles and $\frac{8}{10}$ ths above the 39th Degree compleat, consequently two Miles and three Tenths of a Mile above this Witness's new 40th Degree compleat?

What can my Lord say to this? He must either say that his own Witness, who took and swore to that Observation (and the only one that fixes the Latitude of any one Place whatever) knows nothing at all of the Latitude he has sworn to, (and which indeed is very true, Degrees being so uncertain) or else, he must admit that we have granted to him, already, two Miles and three Tenths above even his present Demand.

Such is the Case, the Defendant has made for himself.

5.

John Hart, of Maryland, Ferryman, Defendant's Witness only.
[*Lib. G. fol. 246. Int. 20. fol. 247.*]

He lives at a Ferry in Queen Anne's County, Part of the Peninsula; and the Isle of Kent is separated from the Peninsula by a Water, which, in the narrowest Part of it, where he keeps a Ferry, he believes, is about 150 Yards wide. That the said Island lies to the Westward of the Peninsula, and is Part of Queen Anne's County aforesaid.

Thomas Hymson Wright, [Lib. G. fol. 251. Int. 20. fol. 266.]

Says the same.

Ergo—I suppose the Order of Council was not forged; for there is such an Island, and it lies very near the Peninsula, and consequently, there must have been such an Order of Council relating to it.

6.

The Defendant thought that we had not sufficiently proved his small Loghouse Fort, so he cross-examined two of our Witnesses about Forts, till he got out another very antient Swedish and Dutch Fort, in Newcastle County, one of the Three Lower Counties, which, I suppose, he did not chuse to hear of, viz.

William Peterson, of New Jersey, aged 92, [Lib. H. fol. 7. Int. 4. fol. 10.]

Says, that when he first came into America (which, in Answer to the second Interrogatory, he says was in the Year 1658) there was a Fort by the North side of Christiana Creek, about three Miles from its Mouth, which was then possest by the Dutch, but, the Deponent was informed, originally built by the Swedes, to keep Possession from the Dutch.

John Rambo, of New Jersey, aged 79, [Lib. H. fol. 19. Int. 4. fol. 23.]

He remembers the Ruins of a Fort, which stood about 3 or 4 Miles up Christiana Creek, on the North-East side thereof, and as he believes about 4 Miles North-East from the Town of Newcastle. He has been informed by his Father, and other ancient People, that the said Fort was built and maintained by the Swedes.

I doubt this is not the Fort the Defendant wanted to enquire after; but he has got it, and by it, has himself proved, that the Swedes and Dutch had been settled there, not Lord Baltimore.

7.

The following nineteen Depositions tend to prove two Points; 1. That my Lord Baltimore did, about 1673, burn and destroy a Place, then called the Whorekills, now called Lewes-Town. 2. The Place where those Whorekills were; and that, for a two-fold Purpose, viz. in order to affect our Cape Cornelius, as well as to shew what he did to assert his Right in the Three Lower Counties.

Boudoin Robins, of Maryland, aged 34, [Lib. G. fol. 282. Int. 7. additional fol. 286.]

Has heard of a Place called the Whorekills, which is now called Lewis-Town, and he understands lies in Sussex County,

about five Miles distant from Cape Hinlopen, markt in the Plan before produced to him Cape Cornelius, and lies opposite to Cape May. Knows the Places on the Sea-Coast called Indian River, and Phenix's Island. Believes the Whorekills is distant, Northward, from Phenix's Island aforesaid, about twenty-two Miles, and about twelve Miles, to the Northward of Indian River.

John Miller, of Maryland, aged 44, [Lib. G. fol. 271. Int. 7. addit. fol. 277.]

Has been at a Place, formerly called the Whorekills, and now called Lewis-Town, which lies in Sussex County, that is near opposite to a Point of Land called Cape May in New Jersey. Has heard that the Whorekills aforesaid were burnt, by one of the Defendant's Officers and Men, but knows not on what Occasion. Is acquainted with Phenix's Island and Indian River, and that the Whorekills is about twelve or thirteen Miles Distance, Northward, from Indian River, and about twenty two or twenty three Miles Distance Northward, on a strait Line, from Phenix's Island. That the Whorekills is situate within Delaware Bay, upon a Creek, about five Miles Distance from the Pitch of the Cape markt Cape Cornelius in the said Exhibit.

Albert Cox, of Maryland, aged 47, [Lib. G. fol. 90. Int. 7. additional fol. 91.]

Has heard of a Place called the Whorekills, and has heard his Father say that he was prest for a Soldier to go burn and destroy all before them at the Whorekills; but whether it was done or not, cannot tell.

Colonel Thomas Colvill, of Maryland, aged 50, [Lib. G. fol. 120. Int. 7. additional fol. 123.]

Has heard of such a Place as is called the Whorekills, which, he understands, is the same Place now called Lewis-Town in Sussex County; Has heard of such a Place as Indian River, but knows nothing of it.

Thomas Hynson Wright, of Maryland, aged 52, [Lib. G. fol. 251. Int. 7. additional fol. 267.]

Has heard of a Place or Town called the Whorekills, lying in Sussex County, and has always understood that the Place now called Lewis-Town, is the Place formerly called Whorekills, and lies opposite to a Point on the North side of Delaware Bay called Cape May. Has heard ancient People say that the Whorekills was formerly settled by the Dutch, and refused Obedience to one of the Defendant's Ancestors; who, thereupon, sent Officers to subject them, and that, he understood, they burnt and destroyed their Habitations.

Gideon Tillman, of Maryland, aged 57, [Lib. G. fol. 202. Int. 7. additional fol. 203.]

Has been to'd by his Father, that he lived with Colonel Francis Jenkins, upon the Whorekill Creek, and that the Place in Sussex County, where Lewis-Town is now built, is the Place was formerly called the Whorekill Town; and hath also heard his Father say that it was opposite to a Cape, but does not remember the Name. Has heard his Father say, that every House at the Whorekill, and the House his Father lived in, were burnt except a House called the Cave which belonged to a Dutchman: And heard his Father say it was burnt by one Captain Howell, to prevent the Dutch taking of it; for that the said Dutch had taken New-York, or some other Place; And that the People of the Town, complaining of the Burden of maintaining the Soldiers, Captain Howell went from the Town, under a Pretence of seeking Relief from the Lord Baltimore, came back the next day, and ordered the Soldiers to separate, and go two together to each House, and burn them; which they accordingly did, after having taken the Arms out of the respective Houses; and then, being afraid to stand it, the said Howell, ran away to New-York. And further has heard his Father say, that he help't to carry the Chain for the said Jenkins, to survey several Tracts of Land, under the Lord Baltimore, near the Whorekill Town, and in particular to survey the Land on which the said Town stood, before the burning the said Town as he believes. And that the said Colonel Jenkins and his Father, sent their Wives away, from the said Whorekill Town, to Somerset County in Maryland, before the said Burning, for fear of the Dutch. And that after the Burning aforesaid, the said Colonel Jenkins and his Father went themselves to Somerset County aforesaid.

George Yeasey, of Maryland, aged 61, [Lib. G. fol. 82. Int. 7. additional fol. 85.]

Has heard of a Place called the Whorekills, lying in Sussex County, but never saw it. Has heard, from some ancient Men, that Lord Baltimore made a Demand of the said Place, and that the People there refused to become Tenants to the Lord Baltimore, whereupon the Lord Baltimore, sent a Party of Men, who burnt a Part of the Town.

James Potter, aged 64, [Lib. G. fol. 150. Int. 7. additional fol. 152.]

Is well acquainted with the Place or Town formerly called the Whorekilln, which is now called Lewes-Town. That it lies in Sussex County. That the Whorekills, now called Lewis-Town, lies opposite to a Point or Cape of Land called Cape Hinlopen or Henlopen, there being a Creek that runs between

the Town and Cape aforesaid. Has heard his Mother say, that her Father removed out of Somerset County in Maryland, and settled at a Place called Rehoboth, within seven Miles of the Whorekills aforesaid; That, some time after, the then Lord Baltimore sent a Captain, with 40 Men, to defend the People there from the Heathen; That the People, being poor, could not maintain the Men sent by Lord Baltimore, but that the People sent his Lordship Thanks, for sending to protect them, but desired the Men might be taken away, because he Inhabitants were poor, and could not maintain them. Whereupon the Lord Baltimore, as this Deponent has likewise heard, said, Poor Rogues! Can't they maintain 40 Men? And, afterwards, sent the said 40 Men to burn the Houses, which was done. Whereupon the People then sent this Deponent's Grandfather, and another Person, to New York, to solicit Relief for the Injuries they had sustained. He has heard of Phenix Island, and is acquainted with Indian River. Does not know how far Indian River is to the Southward of the Whorekilln, but says that Indian River divideth the County of Somerset and Maryland, from Sussex County.

Robert Money, of Maryland, aged 65, [Lib. G. fol. 36. Int. 7. additional fol. 38.]

Has heard his Father, Jeffry Peterson, and Guiseman Cock, say, they were prest, to serve under one Captain Howell, as Soldiers, to attack and demand Possession of a Place called the Whorekills, for the Lord Baltimore, and that they went and burnt a Barn and some Outhouses, and to the best of his Remembrance, that the Inhabitants submitted to them. And he understood that this Transaction was about fifty-seven Years ago [1673].

William Price, of Maryland, aged 66, [Lib. G. fol. 59. Int. 7. additional fol. 61.]

Has heard there is such a Place as is called the Whorekills, in the County of Sussex, but never saw it. Has heard his Father say that Soldiers were sent from Maryland, that did burn some Wheat Fields, or Stacks of Corn, at or near the Whorekills, and that there was not above six or eight Dutch or Swedes Families there, at that time: but how long it is since the same happened, or was done, does not remember to have heard.

Walter Scott, of Maryland, aged 69, [Lib. G. fol. 52. Int. 7. additional fol. 54.]

Has heard of a Place called the Whorekill. Has heard that the Whorekills borders upon the Sea and Delaware. Heard one John Atkey say, that he was one of the Soldiers that was sent

to subdue the Whorekills. And also heard him talk of burning and subduing, but what he does not remember.

Margaret Simpson, aged 69, [Lib. G. fol. 194. Int. 7. additional fol. 195.]

Has heard the Place now called Lewis-Town, was called the Whorekill-Town, as she apprehended by way of Ridicule, and that the proper Name she understood to be Lewis-Town, ever since she knew it, and lies over-against Cape May. Heard that Lewis-Town was taken and burnt by some Persons, but by whom, or on what Occasion, knows not. Knows a Place called Indian River, and that, about 40 Years ago, she lodged at the House of one Jenkins, who said he was a Tenant of one William Clark of Lewis-Town. And she knew one John Stokely, who lived about a Mile to the Southward of the Place where Jenkins lived, and below the Place where Indian River now empties itself into the Sea; which said Stokely was while he lived there, to the best of her remembrance, a Justice of the Peace for the County of Sussex aforesaid. And believes the Mouth of Indian River is about eighteen Miles distant from Lewis-Town aforesaid, and lies to the Southward of the said Town.

Martha Johnson, uncertain of her own Age, but believes 72, [Lib. G. Fol. 210. Int. 7. additional Fol. 211.]

Knows a Place, which was called the Whorekills, and is called Lewis Town, and lies in Sussex County. And she knows of no Cape opposite to it, but the Cape near Lewes-Town. Says she saw the Whorekilns burnt, when she was a Girl, and her Father's House in particular; but by whom, or by whose Order, knows not, but has heard it was done by one Captain Howell. She has heard of Indian River and Phenix's Island, but does not know where they lie.

John Webster, of Maryland, aged 72, [Lib. G. Fol. 125. Int. 7. additional Fol. 126.]

Knows a Place called the Whorekills, lying in the County of Sussex. That it lies upon a little Creek. That over or opposite to it, across the Creek, there lies a Cape, that was called Cape Hinlopen when he lived there, which was about 51 Years ago, [about 1689] Knows a Place called Indian River, which lies 10, 12 or 14 Miles to the Southward of the Whorekills, and is not acquainted with the Sea Coast.

The last Witness we cross examined.

James Morgan, of Maryland, aged 80, [Lib. G. Fol. 91. Int. 7. additional Fol. 93.]

Has heard of a Place called the Whorekills, and has been told, by two Persons, that they went along with Captain

Howell, who had a Commission from Lord Baltimore, to burn and destroy the Whorekills. That, when they came there, they gave the Inhabitants three Days time to remove their Effects. That the Dutch Families did take the greatest Part of their Effects away; but the English Families that were then there said, They would remove nothing, and if they would burn they might; That thereupon, they fired the Town and returned home.

John Fleaharty, of Maryland, aged 102, [Lib. G. Fol. 145. Int. 7. additional Fol. 148.]

Knows the Place formerly called the Whorekills, the Place which is now called Lewes Town, opposite to Cape May, and near Cape Hinlopen, marked Cape Cornelius in Lord Baltimore's Map. And says that the County of Sussex was formerly called Whorekill County. Has heard the Lord Baltimore sent an Officer, and some Men, to demand Possession of the Whorekills of the Dutch Inhabitants, which they refused to give; upon which, he heard, some Houses were burnt. Knows the Place called Indian River, and that the Whorekill Town, now called Lewes Town as aforesaid, is about 7 or 8 Miles to the Northward of Indian River as he believes.

Isaac Freeland, [Lib. H. Fol. 65. Int. 10. Fol. 67.] George Ross, [Lib. H. Fol. 69. Int. 10. Fol. 73.]

That the Town, now called Lewes, was formerly called the Whorekills, and that they are one and the same Place.

John Teague, our Witness, [Lib. H. Fol. 43. Int. 5. additional Fol. 45.]

Was also cross examined to this; and he says that Lewes Town, and the Place formerly called the Whorekills, is one and the same Place.

To what End the Defendant examined these 19 last Witnesses, I don't know; nor have we cross examined any one of them (save John Webster and George Ross, and our own Witness Teague) to any Matter whatever.

It is most certain, and we readily admit, that the Cape, near Lewes Town, which in my Lord's Map was marked Cape Cornelius, (and rightly so, according to all the ancient Maps) has been, for several Years past, called, by some Persons, Cape Inlopen or Hinlopen; The Name of the old Cape, which was a deceitful Cape to Sailors, or something like that Name, being, latterly, transferred up, from Phenix's Island, to the Place where there is a real and actual Cape which is at the Mouth or Entrance of Delaware Bay, and is nearly opposite to Cape May. But this Fact, if it stood alone, is of no sort of Service to

Lord Baltimore; But it is accompanied, by his own Witnesses, with such other Facts as prove the substance of the thing entirely with us.

Do these Witnesses prove that the Whorekills is the Place which was originally called Hinlopen by the Dutch, and so named in their Maps? For that's the precise Matter put in Issue by my Lord's Answer as the Instance of Deceit upon him?

Is there any Possibility of Doubt whether the old Cape Hinlopen was, or was not, at the Mouth of the Bay? Certainly there can be none. Where does the very first Dutch Record that we have, in the Year 1629 or 1630, place it? Why 8 great Miles (8 Leagues) South of the Bay of the South River. Where does the Order of Council of 1685 place it? Why down somewhere in the Sea; for the Peninsula, which was then, (by the Parties Agreement as I may say) to be divided, was such a Peninsula as was bounded by Delaware River, Delaware Bay, and the Ocean; which last Boundary had been absolutely wrong if the old Cape Hinlopen had lain at the Mouth of the Bay. Where do all the ancient Dutch and Swedish Maps place Cape Hinlopen? Why just as my Lord's own Map does and as the Articles express it, South of Cape Cornelius.

Do these Witnesses fix this New Cape Inlopen or Hinlopen, to be the South Bounds of Sussex County? No. If the Fact had come out so, Then, indeed, my Lord's Map might have been wrong, and might have deceived him; but all his own Witnesses, as well as ours, say, that this New Cape Hinlopen, was not the South Bounds of Whorekill, or Sussex County; but, that Sussex County went down to Indian River, and below or South of Indian River, and that a Magistrate of Sussex County lived in that South Place; and that that Indian River, itself, now, at this very time, divides Maryland and Pensylvania; which Indian River they make to be 12, 13, 14, or even 18 Miles South of, or below the Whorekill Town, or this new Cape Hinlopen. So that, had we taken our South Bounds of these lower Counties (as my Lord Baltimore insinuates we ought to have done) up, at this New Cape Inlopen or Hinlopen, tho' he himself gave us, and we were readily intitled, down to the Old Cape Hinlopen. We should have been deceived with a witness, for we should have given up to him 18 Miles of what his own Witnesses prove is in our actual Possession. And please to note all our Witnesses and Evidence prove our true South Bounds go down lower yet, quite down to the Old Cape Hinlopen.

And altho' my Lord's Sheriff of Somerset County made a sort of fresh Pursuit, for the first time, up above Phenix Island, near to Indian River, only about the Year 1696, when one Peter Waples run away for Debt out of Maryland, yet, he has not proved a single Settlement made by him North of Fenix's Island, to this Hour.

I would here, in time, observe one thing, the Defendant imagines that the Whorekills, and the Cape, are synonymous Terms for one and the same Puncto or Point of Land, whereas, the Whorekills was always a District or Territory, and a very extensive one, under the Dutch, and the Duke of York, and was made into a County (with its particular Bounds, which pray mark, in the written Evidence) by William Penn, as soon as ever he took Possession of the County in 1682. Who then, instantly, granted out to Fenix's Island, which is the old Cape Henlopen, to the Duke of York, to himself, and to numbers of other Persons; and the Cape is a Point of Land only, not a District or County.

Well, but my Lord made all this Proof, for another Purpose also; for he swears, Fol. 77, that he believes his Ancestors exercised all Acts, of Proprietorship and Government in the Lower Counties, and again, Fol. 188, that he and his Ancestors have claimed, maintained and supported their Right to the lower Counties, and have been at Expence in building Fortifications therein, to defend the Inhabitants from the Indians. So that this most cruel Action, of burning the Whorekills, the Wheat Fields, the Stacks of Corn, the Barns, the Out-houses and the Dwelling-houses of all the poor Inhabitants, was a [Maryland] Act of Proprietorship, and which, he, also, did, in a very good Humour, and under Terms of great Pity and Compassion to the poor People. What, are they poor, can't they maintain 40 Men? Then, burn all that the poor People have in the World! A dreadful Act of Propriety? And what aggravates the Inhumanity of this savage Action is, that these Men were sent, colourably, to defend the Inhabitants from the Dutch, (at a remarkable time, about 1673, when the Dutch threatened, and actually did re-enter) and to defend them from the Heathen; but, in reality, to burn all they had in the World. This is his way of Asserting his Right, and defending his Tenants: And what do his own Witnesses prove, besides and beyond all this? Why, that the Town was settled before. But, then, he burns out the People, and falls to surveying the very Town, which our Witnesses, and his too, prove

to have been then an ancient settled Town by the Dutch. There is one other Instance, or two, of my Lord, and his Ancestors, asserting their Right to the lower Counties, which his Witnesses don't mention. His Grandfather invented, and he revived, a sham Order of Council about Clayborne and the Isle of Kent; and he himself is denying, and swearing away, his own solemn Agreement; which are Acts highly worthy to be ranked along with the foregoing Instance; being, each of them, an Act of so high and flagitious a Nature, as none, but himself, would give an Opportunity to have told of them. But please to observe, besides all the Depositions which prove that my Lord Baltimore never possessed the Whorekills, but that the Dutch, the Duke of York, and Mr. Penn did, our written Evidence not only corrects the Time of this Transaction, that it was about June or September, 1672; but it shews that Lord Baltimore could not possess the Whorekills; for, on 12th of August 1672, there is Governor Lovelace's Letter to the Governor of Maryland, demanding Reparation for some former Insult. And on 14th April, 1673, the Governor of New York sends the Magistrates of New-castle down, to hold a Court at the Whorekills, to enquire into the late irregular Proceedings there, and to settle the Government and Officers there, under the Duke's Authority, as formerly. And that was immediately succeeded by the Re-entry of the Dutch. After which, and after the English being again repossessed, viz. on 6th November, 1674, there is Governor Andros's Commission to Captain Cantwell and Mr. Tom to repossess and settle the People in their just Rights at the Whorekills; and 5 Days after that, viz. on 11th November, 1674, there is Governor Andros's further Commission, to them two, to administer the Oaths to the Magistrates at the Whorekills. And on 9th January, 1674, there is his Letter to Captain Cantwell, thanking him for having settled the Magistrates at the Whorekills.

So that, the burning the Whorekills by Lord Baltimore was an Act of Power and Force, but not attended with any Possession.

8.

NOTE—Before we go any further in the Defendant's Proofs, it may be necessary to observe, that the following eight of the Defendant's Witnesses, here named, were never at all examined by us, to any Point whatever; but, in the Defendant's own Examination of them, they have proved themselves to be in-

interested in the Dispute; so that we object to them as being disqualified. Their Names, and the Places where they prove their own Interest, are here under marked. So that, as often as their Depositions are mentioned, we put the Mark* before their Names.

**William Barnes, Lib. G. Fol. 181. Int. 6. Fol. 182.*

**Zebulon Hollingsworth, Lib. G. Fol. 64. Int. 2. additional Fol. 66.*

**Ann Holy, Lib. G. Fol. 103. Int. 8. additional Fol. 106.*

**Daniel Needham, Lib. G. Fol. 155. Int. 6. Fol. 156.*

**Benjamin Peirce, Lib. G. Fol. 94. Int. 21. Fol. 95.*

**Nicholas Ryley, Lib. G. Fol. 41. Int. 11. additional Fol. 42.*

**Adam Short, Lib. H. Fol. 60. Int. 8. Fol. 61.*

**Richard Thomson, Lib. G. Fol. 109. Int. 21. Fol. 110.*

9.

Joseph Rose, the Defendant's Witness, [Lib. H. Fol. 40. Int. 2. Fol. 46.]

Says that a Paper Writing, No 1. (endorsed a Copy of the Exemplifications of Letters Patent from King Charles the Second to the Duke of York, taken from the publick Registry kept in the Secretary's Office in New Jersey). Also the Paper Writing, No 2. (endorsed Copy of Part of a Deed from the Duke of York, to the Lord Berkeley and Sir George Carteret, taken from the said Registry) are both of his Hand Writing, and are true Copies, taken from the said Registry, kept in the Secretary's Office at New Jersey, he having examined them, the &c. at the End of No 2. excepted; The Reason of that being there is, because he was ordered by the Defendant's Council to copy no more of the said Deed. That this Deponent acts for one Mr. Home, who is Deputy Secretary of New Jersey, and this Deponent has the Care and Keeping of the Books, Papers and Records kept in the said Secretary's Office.

I don't know whether No. 1 is the first Grant in 1663, or the second Grant in 1674, which was made of New York, to the Duke of York; but we have proved both of them from the Chappel of the Rolls here.

As to No. 2. which is plainly the Duke's Grant of New-Jersey, I know there was such a Grant, but don't know the Contents, and as the Defendant's Council have garbled it, and ordered the taking a Copy of a Part only of it, we desire that Part may not be read.

Colonel Robert King, of Maryland, aged 51, [Lib. G. fol. 319. Int. 16. fol. 320.]

Has lookt upon a Paper Writing markt No. 7. and endorsed

(Extracts out of the Registry Books kept by James Weedon, and Francis Jenkins, Surveyors of Land on the Sea-side and Delaware Bay) and that they are true Copys, taken from a Book of Certificates, which belonged to Colonel Francis Jenkins deceased, who, in his Life-time, was Surveyor of Somerset County from 1671 to about 1680, as this Deponent has heard; [Note, This Deponent was not born until 1689] and that the Entrys, of which the said Papers purport to be Copies, which are signed by the Name of Jenkins, he believes to be made in the Books, by the said Jenkins, whose Hand-writing the Deponent was well acquainted with, having lived with him several Years. And that the rest of the Entrys, of which the said Papers purport to be Copys, he has heard, were made by one James Weedon, who was a Surveyor, as he has also heard, but was not acquainted with Weedon, or his Hand-writing. And he believes the said Entries, so made by the said Jenkins, was made as Surveyor of the County aforesaid, [that is Somerset County in Maryland] and that, by the Descriptions of the Lands in the said Entries mentioned, he supposes, some of the said Lands to lye about the Whorekills, and the rest to lye between Delaware Bay and Indian River, and that the said Jenkins was the first Person this Deponent saw possess of the said Book, who continued possess of the same till his Death; and that after his Death, it remain'd some time, in Possession of Jenkins's Widow, from whom this Deponent received the said Book, and he has compared and examined the said Paper Writing, by the Original Papers whereof they purport to be Copies with three Persons, within the Space of four or five Months last past.

This is a most strange Deposition. He has heard that Jenkins and Weedon were Surveyors, but does not say that he believes it; and these Entrys or Papers have been in a private Person's Hands, and he supposes they relate to Lands in such and such Places.

We beg that not a Paper of these may be read, these were made where the Order of Council of 1638 was.

Griffith Beddoe, of Maryland, [Lib. G. fol. 18. Int. 11. fol. 23.]

Has lookt on the Exhibit No. 4. purporting to be Extracts or Copies of several Grants or Patents of Lands, recorded in the Land Record Books of Maryland, and they are true and exact Copies of what they purport to be Copys of, out of the Land Record Books of Maryland, and he examin'd them, with the said Record Books, a few Days before he was examined: says the said Record Books are kept in the Land Office in the State house of Maryland, and that the Entrys of the said Patents, in the said Record Books, appear to be fair and regular, and to

be done, at the times they ought to have been enter'd and recorded according to Usage and Practice of Maryland.

This is a very suspicious piece of Evidence: the Witness does not venture to say that he believes they were fairly entered at any such times; only that they appear to be fair, and to be done at such times as by the Usage and Practice there they ought to be done.

And we remember that they make Returns of Surveys there, without seeing the Land, and so they may make Entries, according to their Usage, without seeing the Grants.

Griffith Beddoe, of Maryland, aged 39, [Lib. G. fol. 18. Int. 10. fol. 19.]

Is acquainted with the usual Method of taking up, and patenting Lands in Maryland, which he became acquainted with by being a Clerk in the Land-Office ever since the Year 1727. And the Method has been as follows: The Persons applying for Land, pays the Proprietor's Agent the usual Fine for the Number of Acres he desires, who gives a Receipt, directed to the Chief Clerk in the Land Office, who makes out a Warrant for such a Number of Acres, directed to his Lordship's Surveyor: who, as he shall be directed by the Person who obtains the Warrant, surveys the Quantity of vacant uncultivated Land, in any Part of the Province where it is desired, and returns a Certificate to the Land Office; from whence it is transmitted to the Examiner-General, for Examination; and when the Certificate has past the Examiner's Office a Patent is, in the Land-Office, made out, carried to the Chancellor to be signed, thence, to the Keeper of the Seal, to be sealed. And, after that, the Patent and Certificate recorded in the Land-Office. That the Place, where cultivated, vacant Lands are desired to be taken up, have, always, been particularly described, in special Warrants, since he has been a Clerk in the said Office. That the Persons obtaining common Warrants have been at liberty to take up vacant uncultivated Land, in any Part of the Province, within 6 Months after the Date. And that all Warrants, be they special or common, if they are not executed in 6 Months from their Date, are of no force, unless renewed before the 6 Months expire. That all Warrants, that issue out of the Land-Office, are assignable, from one Person to another; That all Patents for Lands were granted under the Great Seal of the Province. And the Estate granted, a Fee Simple.

A great deal of Ceremony, to no manner of Purpose; for they have confest that these Returns of Surveys are often made without so much as a View of the Spot certified to be surveyed.

Besides this Witness does not pretend that this was, heretofore, the usual Method of making Grants in Maryland. And my Lord in His own Answer, fol. 291. says, that this Method of vacating Warrants, if not made use of, has been in Use for 15 Years before his Answer, that is, from 1722.

John Ross, of Maryland, aged 44, [Lib. G. fol. 303. Int. 9. fol. 305.]

Is acquainted, and conversant in, the Council Books, of Maryland, having been appointed Chief Clerk of the Council there in 1728, and continued so ever since. Says the Paper-Writings markt No 3. (endorst Extracts of Copies from the Council-Books of the Province of Maryland) are true Copies from the said Council Books, and were copied by himself and another within five Months past, compared and examined the same, by the Originals of which they purport to be Copies, and that the Council Books[he does not say the said] are kept at the Council Office, at Annapolis. And that the Articles in the Council Books, of which the Exhibit aforesaid purports to be Copies, appear to be fairly made, and, as he believes, were done at the time the several Matters by the said Dates of such Entries, are supposed to have been transacted.

We don't know what these relate to, but suppose they relate chiefly to Colonel Talbot's Loghouse or Fort set up in 1683. But don't care to admit these, for fear of some foul Play in them. Nor are the Books of the Minutes of Lord Baltimore's Council, Records; nor ventured to be called so; wherefore hope they shall not be read.

James Boyden, of Philadelphia, Merchant, the Defendant's Witness, aged 30, [Lib. H. fol. 100. Int. 2. additional fol. 101.]

Has lookt upon the Paper-Writings markt No. 5. and says that the Extracts and Copies therein contained, he believes to be true Copies of what they purport to be Copies, having been examined by this Deponent, and the Deputy Secretary of New-York, this Deponent reading the Original Records, while the Deputy Secretary lookt over the said Extracts and Copies, and corrected them according to the said Originals.

NOTE—We have too much Reason to fear every thing which comes from the Defendant and as to Extracts, they can't be read; nor are these Copies. I think, duly proved, the Witness read the Originals only to the other Person.

William Ghiselin, of Maryland, aged 36, [Lib. G. Fol. 249. Int. 19. add. Fol. 249.]

That the Parchment-Writing markt No. 9. purporting to be Letters Testimonial of several Copys, or Extracts, from the

Records in the Secretary's Office in New York, and he examined and compared the same in the Fort at New York, with the Deputy Secretary there, by the original Record Books, of which the same purport to be Copys or Extracts, and the same are true Copys, or Extracts from the original Record-Books.

I believe this Parchment Writing is really a Paper Writing; but no Copys from New York will hurt us. What his Extracts are, I don't know; and if they are Extracts, or Abstracts they are not Evidence.

10.

The Defendant wanted to know, who were the first Discoverers, who were the first Settlers, and what were the first Names, of the three Lower Counties; in order whereto he examined two of his own Witnesses, viz.

Charles Hillyard, of Kent County, aged 63, [Lib. G. Fol. 158. Int. 3 and 4. Fol. 160.]

Does not know who were the Persons, that first discovered the three Lower Counties; and the first Name he heard the said Countties called by, was the Territories of Pensilvania; and hath since been called the Counties of Newcastle, Kent and Sussex upon Delaware. And that they have been generally, so called, by all the Inhabitants of the three Lower Counties, and some of the People of Maryland, with whom he has occasionally conversed upon that Subject. That he understands the Lower Counties to be distinct, both from the Provinces of Pensilvania and Maryland.

The same, [Int. 4. fol. 162.]

Has heard the first Christian Inhabitants and Settlers of the three Lower Counties, were Swedes; and that they were, afterwards, settled by the Dutch; and that some Parts of Newcastle County and Sussex County, were first settled; the Settlement made in Sussex County was, then, called the Whorekills. That the Swedes and Dutch, where they settled, made Plantations, as he has been informed by one William Clerk, Receiver of Rents, and Surveyor for William Penn Esq; and several other Persons.

John Holliday, of Kent County, aged 39, [Lib. G. fol. 170. Int. 3. fol. 172.]

He never heard them called by any other Name than Newcastle, Kent and Sussex, or the three Lower Counties. He does not understand that they are within either of the Provinces of Pensilvania or Maryland, but under a separate Government, and distinct from each. But has heard that the said Counties

have been claimed by the Proprietors of Pensilvania: and also by the Proprietor of Maryland; and that the same Person who exercised the Acts of Government in Pensilvania, has, ever since this Affirmant's arrival exercised the Acts or Powers of Government in the said three Counties.

11.

The Defendant's own Witnesses not coming out to his liking, he next cross-examined the nine following of our Witnessess to prove that the new Cape Hinlopen lies opposite to Cape May.

Thomas James, of Philadelphia, Pilot, aged 49, [Lib. H. fol. 12. Int. 2. fol. 13.]

Was born in Pensilvania, and has resided in, and near, it ever since. He knows the Places called Cape May, Cape Henlopen, and the Whorekills, which last is generally now called Lewes. Has known the same above 28 Years. That Cape May, and the Cape now called Hinlopen, lye opposite to each other, and make the Mouth of Delaware Bay.

Elizabeth Morris, Widow, aged 65, [Lib. H. fol. 26. Int. 2. fol. 27.]

Lived from her infancy till she was above 20, in Sussex County, and the residue of her time in Philadelphia. Has seen Cape May, and the Cape opposite to it, at the Whorekills, which bore the Name of the Whorekill Cape, and Cape Hinlopen, as she believes—Has known the aforesaid Places 55 Years. That they have been reputed to be the Capes of Delaware.

Samuel Hollingsworth, Farmer, aged 67, [Lib. H. fol. 29. Int. 2. fol. 30.]

Came into America in 1682, lived in Newcastle County from thence to 1701, and has resided ever since in Chester County in Pensilvania.

John Musgrave, Farmer, aged 73, [Lib. H. fol. 34. Int. 2. fol. 35.]

Has lived ever since 1682 in Pensilvania and one of the three Lower Counties.

Samuel Preston, Esq., aged 75, [Lib. H. Fol. 104. Int. 2. fol. 105.]

Has lived in Maryland, the three Lower Counties and in Pensilvania, from his birth to this time. Has known Cape May, Cape Hinlopen and the Whorekills above 50 Years. That Cape May and Cape Inlopen from [it should be form] the Mouth of Delaware Bay, and have, always, since he knew them, been reputed to do so; and are opposite to each other. That the said Cape Inlopen is near to the Town now called Lewes, but formerly the Whorekills,

*John Rambo, of New Jersey, Farmer, aged 79, [Lib. H. fol. 19.
Int. 2. fol. 20.]*

Was born in the Place now called Pensilvania, near where the City of Philadelphia now stands; where he resided for above the first 20 Years of his Life. and since resided in the Jerseys. Knows Cape May and Cape Hinlopen, which lyes opposite to Cape May, and a Place called the Whorekills. That he was there a Whaling about 50 Years ago, and has never been there, at any other time. That they have been reputed to be the Capes of Delaware. That they have, as he has heard, been so reputed, ever since the first Discovery of those Parts—and that the Mouth or Entrance of Delaware Bay lyes between the said Capes.

Joseph Wood, Carpenter, aged 81, [Lib. H. fol. 4. Int. 2. fol. 4.]

Has lived in America about 62 Years—soon after his arrival there he settled under the Government of Sir Edmund Andros, who was then Governor of New York under the Duke of York, on the West side of Delaware, near the Falls, and has generally resided on the same Place ever since he settled it.

*John Teague, of Maryland, Planter, aged 85, [Lib. H. fol. 43.
Int. 2. fol. 44.]*

Was born in Virginia, and has lived from his Infancy in Somerset County in Maryland. Does not know Cape May, but has known the Whorekills, and the Land from Phenix's Island to the Whorekills Town, for above 50 Years. And that the said Land has been called by the Name of Inlope, for the said Time.

Thank him for this, very kindly.

William Peterson, of New Jersey, Farmer, aged 92, [Lib. H. fol. 7. Int. 2. fol. 8.]

Came into America about 82 Years ago [1658] and lived, for 20 Years next following, in Christiana Creek, and then removed into the Jerseys, and there has resided ever since. That, at the time he settled at Christiana, the Dutch were possess'd of that Part of the Country and were, afterwards, dispossessed by the English under Captain Carr. That, some time after that, the Dutch again took, and possessed it, till an Exchange, as he has heard, was made between the English and Dutch, of Surinam for that and other Places. That he knows Cape May and the Whorekills, but does not know of any Cape called Henlopen. That he has known Cape May and the Whorekills about 70 Years, and that they have been deemed and taken to make the Entrance or Mouth of Delaware Bay.

Exceedingly material in this Old Witness, he never heard of Cape Hinlopen up at the Whorekills, tho' he knew it

70 Years. This shews that it is a new Name given to that Upper Cape.

And this is what the Defendant has got, upon his Cross Examining our nine old Witnesses to this Point.

12.

The Defendant next examined three other Witnesses, of his own, to prove what Settlements were made, and under what Government, near and about Philadelphia, before the Year 1680.

George Fitzwater, aged 66, [Lib. H. fol. 85. Int. 12. fol. 87.]

Has heard and believes that several Swedish Settlements were made, near the Place where Philadelphia stands, before the Year 1680, and to the Northward of it about ten Miles, and to the Southward of it, as far as, or near to, Chester. Says he believes such Settlers had Grants from the Governor of New York; but can't say who appointed such Governor.

Benjamin Bancroft, aged 71, [Lib. H. fol. 83. Int. 12. fol. 84.]

Says that, before the Year 1680, and he believes before he was born (which must be before 1669) several People were settled, near to the Place now called Philadelphia, both to the Northward and Southward. Farther says, he has heard from his Mother, and believes, that she was born at the Place called Kingcess.

Richard Buffington, aged 85, [Lib. H. fol. 88. Int. 12. fol. 90.]

Says that, before the Year 1680, there were some Settlements made upon Delaware, from the Falls thereof, downwards to the Whorekill Town, by English, Swedes, Dutch and Finlanders. That this Deponent was, about Sixty Years ago, [1680] at the said Whorekill Town, that is now called Lewes; which then seemed to be an old Town, and to have been a great while settled. That the People, who were so settled upon Delaware, took their Grant from a Governor of New York, under the Duke of York. And that Courts were held, at the Town of Upland, now called Chester, under the Government of the Duke of York, and his Governor at New York.

One would think the Defendant was labouring to prove our Case for us. And

This shews the Reason why we took, from the Duke of York, his Release even as to the Province of Pensilvania it self; he having a great Number of Tenants settled there, under his Government of New York.

But the Defendant, not being yet satisfied, he went on, and cross examined four of our ancient Witnesses, to the same Points, and burns his Fingers again.

William Peterson, of New Jersey, aged 92, [Lib. H. fol. 7. Int. 9. fol. 11.]

Says that, when he came into America (which in Answer to the second Interrogatory, he says was in 1658) there were some Swedes settled, on the Place where Philadelphia is built, both above and below it: and that there was a Fort, about 5 Miles below, on an Island in the Mouth of Skuylkill River, originally built by the Swedes, but then in the Possession of the Dutch, who were likewise possesst of all the Country thereabouts.

So here is another Swedish and Dutch Fort at Skuylkill.

Joseph Wood, aged 81, [Lib. H. fol. 4. Int. 9. fol. 6.]

Says that, when he first came into America, (which in Answer to the second Interrogatory, he says was in the Year 1678) there were but three Inhabitants, near about the Place where Philadelphia now stands; and that one of them was a Finlander, who was settled about a Mile above the Place where Philadelphia now is; and the other two, Swedes, named William and Swan Swanson, who were settled about a Mile below where the said Town now is. That he does not know under what Government the said Persons settled originally; but heard, that they were at the time of the Deponent's Arrival, under the Government of New York.

John Rambo, of New Jersey, aged 79, [Lib. H. fol. 19. Int. 9. fol. 23.]

Says that there were several Settlements, made, before the Year 1680, near about the Place where Philadelphia now is, both to the Northward and Southward of the same, by Swedes, Dutch and English, under the Authority of the Swedes and Dutch, respectively, and afterwards under that of the English.

John Musgrace, aged 73, [Lib. H. fol. 34. Int. 9. fol. 38.]

Has heard that, before the Year 1680, there were many Settlements made, by the Swedes and Dutch, under the Government of the Dutch, above, below, or near, the Place where now Philadelphia stands.

13.

The Defendant went on, and examined another of our Witnesses, to prove how the Whorekills had been settled, and under whom.

John Teague, of Maryland, our Witness, cross-examined, aged 85, [Lib. H. fol. 43. Int. 6. add. fol. 46.]

Has known the Whorekills Town, upwards of 50 Years; does not know how many Families there were, in the said Town, when he was first acquainted with it, but believes there were

about 5 or 6 Families. That he is unacquainted what Number of People were settled in the Country about it. And that the People, in and about the said Town, as he has heard, were, at his first Knowledge of them, under the Government of William Penn Esq;

So the Defendant had enough of this, and examined no more Witnesses thereto.

14.

The Defendant wanted to prove a Susquehanna Fort, situated a great way North, up in the Country, about the River Susquehanna; and in order thereto, examined the 7 following Witnesses, of his own, viz.

Paul Poulson, of Maryland, aged 53, [Lib. G. fol. 124. Int. 6. add. fo. 124.]

Has heard, from several ancient People, there was a Fort, upon the River Susquehanna, at a place called Conejocula, upon the West side of the said River, and that he supposes it was built by the Indians.

Thomas Hitchcock, of Maryland, aged 58, [Lib. G. fol. 77. Int. 6. add. fol. 78.]

Has heard his Father and several other ancient Persons say, that there was a Fort, on the River Susquehannah, but where, or by whom maintained, he knows not.

**Ann Holy, of Maryland, aged 60, [Lib. G. fol. 103. Int. 6. add. fol. 105.]*

Has heard of a Fort, at Susquehannah, many Years ago; but by whom built, or where situated, she has never heard, till about a Week since from her Husband; who told her that it was a great way up Susquehanna River, and above Conestoga; and that she, many Years ago, heard one Captain Hill lost his Hand at the said Fort.

George Veasey, of Maryland aged 61, [Lib. G. fol. 82. Int. 6. add. fol. 54.]

Heard one Major Kelton say that he was one of the Soldiers that attackt an Indian Fort in the Night, and that there were several Men killed in besieging the said Fort; but where the said Fort was situated, or the time when this happened, knows not; but believes it was some Years before he was born. [That must be some Years before 1679 then.]

William Price, of Maryland, aged 66, [Lib. G. fol. 59. Int. 6. add. fol. 60.]

Has heard a general Rumour that there was a Fort on Sus-

quebanna, built against the Indians, but where situated, or by whom built, does not remember to have heard.

Patrick Maugher, of Maryland, aged 67. [Lib. G. fol. 117. Int. 6. add. fol. 118.]

Says that, when he was a Servant, in Governor Nicholson's Time, he heard there was a Fort, that stood upon Susquehanna, built by the Mingo, or Susquehanna Indians. That he has heard it was attacked and taken by one Colonel Ninian Bell, and the Indians there were slaughtered. That he was told, by one William Cannon, now living, that the said Indian Fort stood upon a Part of the Plantation whereon he the said William Cannon now lives at Conejocula. That he was also told by one Philip Roper, that the said Roper was wounded, at the taking of the said Fort, by an Indian Arrow, in his Leg, and the Deponent has seen the Wound aforesaid. And that the Deponent was told that 150 Christians were killed at the taking of the said Fort. And the Deponent has also heard that the said Colonel Beale went to attack and take the said Fort by the command of the Honourable Francis Nicholson, then Governor of Maryland. [This must be since 1694, so that the Witnesses widely disagree.]

NOTE—It appears, by the Maryland Book of Laws, proved in the Cause, at Fol. 3. that Francis Nicholson was Governour in September, 1694; and it appears at Fol. 7. of the same Book, that he was the King and Queen's Governour; so that, where-ever this Fort was, if it was attackt, it was so attackt by Governour Nicholson, as the Crown's Governour of Maryland, not the Proprietor's Governour; Maryland Government being taken into the hands of the Crown before 1694, and continued so till 1716, as appears manifestly from the enacting Style of every one of their Laws during that Space of Time.

John Fleaharty, of Maryland, aged 102.

Has heard that the Lord Baltimore did begin, or intend, to build a Fort at Conestogo, or Susquehanna.

We did not offer to examine any one of the last seven Witnesses. Indeed they prove nothing. Every Word is Hearsay. And if there was a Fort up, at Conejocula, yet they should shew that that was the Susquehanna Fort, and that it was ever known or heard of in 1680, in order to apply this to any thing for their purpose. Whereas our Evidence destroys any thing like that.

But the Defendant went on, and cross-examined one of our Witnesses, viz.

Samuel Preston, aged 75, one of our Witnesses, cross-examined. [Lib. H. fol. 104. Int. 2. add. fol. 104.]

Remembers when he was a Boy to have heard, that the Sus-

quehanna Indians, near the River Susquehanna, as he believes, built a Fort, which was attackt, and taken, by some People from Maryland, under the Command of one Colonel Bell; but how far the said Fort was from the Mouth of the said River, knows not. Says, that, when he first heard of the said Fort, he was so young that he has but a faint Remembrance of a Rumour about it. But further says, that, above 20 Years ago, he rode over the River Susquehannah, above Conestogo Town, with Samuel Carpenter and Joseph Wood, and, about a Mile from the said River, on the West Side thereof, saw a Field, with an Apple-Tree in it, and was told (by Joseph Wood, he believes) that, according to the Description of one Garland, an Indian Trader, he the said Wood believed, that was the Place where the Susquehannah Indians fortified themselves in, when they were pursued by Colonel Bell from Maryland; but says, he believes the said Wood knew nothing more of the Place than by Hearsay, [Note, Joseph Wood is examined in the Cause himself, by both Sides] Has heard, and believes, that the Susquehannah Indians aforesaid, had killed some People, upon Patapasco in Maryland, [Note, That's down very low in Maryland] and, to secure themselves, built the Fort as aforesaid; and that the before-mentioned Colonel Bell, with some Men from Maryland, pursued them, besieged their said Fort, and obstructed their receiving any Provision into it, by which means the Indians were obliged to leave it, and by Force rush't thro' the said Bell's Men.

The Same, [Int. 21. *add. fol.* 115.]

Has never heard of any other Fort on the West Side of Susquehanna; and says, the Place, shewn to him by Joseph Wood, is a little farther North than the Place in the printed Plan called Conestogo.

If the Defendant can possibly make any Use of this Deposition, and would imagine this to have been a Susquehannah Fort, and to have been a Fort really situated at Conestogo, upon this hearsay Story at 3d or 4th Hand yet, such Fort appears, by the latter Part of the Deposition, not to have been any abiding settled Fort, such as was mentioned in the Orders of Council in 1680, but a sudden extempore Fort, run up, just when the Indians had (down in the very Body of Maryland) murdered the Persons, to defend themselves against Colonel Bell, and those who were then pursuing them for that Murder.

You will please to remember, that, tho' the Orders of Council about 1680, talk of the Susquehanna Fort, yet, Mr. Penn's Charter for Pensilvania, contains no such Limitation or Restriction to that Fort.

And indeed, if you cast your Eye upon my Lord Baltimore's Plan, or upon the general Plan, you'll see what a Sort of a Peninsula would be formed, if he was to go up above Conestogo.

And most certainly, the Susquehanna Indians, who were a great Tribe, might have different Forts, and at different times; so that no particular Fort can be applied to that Order, if the Place of this Fort had been proved or fixed.

And, if we believe my Lord Baltimore's own Book and Account of his Province, publisht in 1635, after he had actually made his Settlement, (for he gives an Account therein of his Landing, of his Settlement, and of the whole Country) He tells us, in so many plain Words, at Fol. 7. That the Susquehannocks, a warlike People, that inhabit between Chesopeak Bay and Delaware Bay, had drove the Indians of Yocomaco higher up into the Country. And that Situation of the Susquehannocks does not at all agree with Conestogo, which lies up a great way North of every Part of Maryland.

So that the Susquehannocks had no Fort, up so many Miles in the Country, nor, had any Christian ever been up so high as Conestogo, in long after 1680, as our Witnesses have proved.

15.

Charles Brockden, the Defendant's own Witness, [Lib. H. fol. 102. Int. 17. fol. 102.]

Has lookt on the Paper Writing, No 3. (endorst William Penn to William Standley. Release for 500 Acres in Pensilvania) That the Name, C. Brockden, is of his Hand-writing, and he is Deputy Master of the Rolls for Pensilvania, and Recorder of Deeds for the City and County of Philidelpia, and has the Keeping of the Records of Deeds in the said City and County; and says, the Exhibit is a true Copy of what it purports to be a Copy of, taken from the Records in his Custody as Recorder.

So that this last Proof will clear all Objections, when we cross-examined this same Witness to prove several other Records in his Office for us.

Benjamin Eastburn, our Witness cross-examined, [Lib. H. fol. 117. Int. 24. add. fol. 122.]

Has lookt upon the same Exhibit, which he calls a Release for 5000 Acres. And has heard, that, about, or, before, the first Settlement of the Province of Pensilvania under Mr. Penn, he made Deeds or Grants, for very large Quantities of Land, in the said Province, to several Persons; but the particular Quan-

tities, does not remember. Further says, he believes that the said Deeds, or Grants, and the Considerations and Terms were much the same, as those in the said Exhibit, except what relates to the Indians; and as to that, he can't charge his Memory. Further says, that he has seen a Copy of the Concessions, or Constitution, referred to in the said Exhibit; And that it contained particular Terms, about Lots in and near Philadelphia, and the Settlement of the said Lands; also, other things, which he can't particularly remember.

Charles Brockden, the Defendant's Witness, [Lib. H. fol. 102. Int. 1. add. fol. 103.]

Has lookt upon the Paper Writing, markt No 4. (endorst a Copy of the Frame of Government of the Province of Pensilvania, and Territories thereunto annext, or, William Penn's Charter to the People of the said Province and Territories thereunto annext,) And has examined and compared the same, with the Record, from whence it's described, and that it is a true Copy thereof.

We don't know what the above Release to Standley is, or what Use is designed to be made of it; I suppose, to shew that Mr. Penn sold out some few Lands, upon very cheap Considerations, as soon as he had his Grant of Pensilvania, in order to tempt Persons to go over and begin his first Settlement; for that he most certainly did.

16.

Benjamin Eastburn, our Witness, cross-examined, [Lib. H. fol. 117. Int. 19. add. fol. 121.]

Does not certainly know, but has heard, and believes, that the Town of Newcastle lies very near 20 Miles South of Philadelphia.

John Taylor, the Defendant's own Witness, [Lib. H. fol. 95. Int. 15. fol. 95.]

Says, he, by Direction of the Plaintiff Thomas Penn, did measure how far the Town of Newcastle lies South, of the City of Philadelphia, and found it to be about 18 English Statute Miles.

NOTE—He does not say when he measured this; and the Defendant, in his Interrogatory, Lib. H. fol. 157. studiously, and on purpose, avoids to ask as to the Time when? If he would now fancy that this was before the Agreement, Numbers of our Witnesses prove, that Mr. Thomas Penn was never in America, till after the Agreement executed.

And the Defendant's Surveyor Hynson Wright, swears he surveyed all the lower Counties, to see where the Tangent Line would fall.

17.

John Taylor, the Defendant's own Witness, [Lib. H. fol. 95. Int. 16. fol. 96.]

Has never heard that any other Line, 12 Miles distant from Newcastle, has been run, by Order of the Plaintiff's Ancestors, or themselves, than one, to mark part of a Circle of 12 Miles Radius from the Town of Newcastle, and separate the County of Newcastle from Chester County in Pensilvania. And further says, That several Parcels of Land, lying South of the Parallel of the most Northern Part of the said Circle, are held under the Plaintiffs, as within the Province of Pensilvania, by Grants made about and since the Year 1683. Some of which Lands, the Affirmant says, he believes extends South of the Parallel aforesaid about 6 or 8 Miles, and are extended Westwards, from the County of Newcastle, to the River Susquehannah. Further says, he cannot judge what Quantity there may be settled as aforesaid, or the Number of Persons they are held by: but knows that several Townships, and a great Number of Inhabitants, are so settled as aforesaid.

Samuel Preston, our Witness, but cross-examined, [Lib. H. fol. 104. Int. 12. add. fol. 114.]

That all the Grants made by the Plaintiffs, in the 3 lower Counties, are to the Southward of a Line, drawn West from Delaware, 12 Miles North of Newcastle Town.

18.

The Defendant examined the following Witness, in order to prove an Isthmus somewhere.

William Rumsey, of Maryland, the Defendant's Witness, aged 42, [Lib. G. fol. 129. Int. 1. add. fol. 137.]

Is well acquainted with Christiana Creek and some of the Branches thereof. And also is acquainted with Elk River, and most of the Branches thereof. Has seen the Mouths of both Christiana Creek and Elk River. That Christiana Creek runs into, and flows out of, Delaware Bay or River; and Elk River runs into, and flows out of, Chesopeak Bay. That Christiana Creek runs through Part of Newcastle County. And the Branches of Elk River run up thro' Cecil County, into Chester County, in the Government of Pensilvania. That the small Branches, a little below the Springs, of the said River and Creek, do approach, within a Quarter of a Mile of one another, but believes they do not interlock. Is acquainted with, and assisted, as a Surveyor, in running that Part of the East and West Line,

lately run by his Majesty's Order in Council, between Delaware and Susquehanna; and he believes that the Mouth of Christiana Creek lies about three Miles to the Northward of the said East and West Line.

NOTE—This Man stands single, and alone by himself. They have not been pleased to prove any Map on their Part; not even of this Line which, this Man says, he assisted to run. Nor is he so kind as to tell us whereabouts these same small branches are, which at the Spring Heads, approach so near: All he says, is, that the Mouth, of one of those Rivers, is, as he believes, about 3 Miles North of the East and West Line which he assisted to run. He is mistaken in that Fact, as appears by our Map. But, if that was true, what consequence does it carry? The Mouth of a River, especially in America, (where their Creeks are larger than any Rivers we are here acquainted with) may be 3 Miles North of a Place, and the Head, at the first Spring may be 30, or many more Miles South of it. He certainly intends that the Branches or First Springs are still more North, but then he should have said it, which he does not. And if so, they are a great way up within the main Continent; And, for Proof thereof, this very Deposition, and my Lord's own Answer, will serve us, as well also as our Map. For he tells us, that Christiana Creek runs thro' Part of Newcastle County, and my Lord confesses in Folio 13. of his Answer, that the three lower Counties (of which all the Witnesses agree that Newcastle is the most Northern) are situate on the Eastern side of the Peninsula, and also, above the Peninsula within the main Land or Continent. So that this Person would have the Isthmus of the Peninsula, (which they mean to use this Evidence for) lay a vast Number of Miles up within the main Continent: whereas we, have proved, by many Witnesses, not only the true Isthmus, at the Head of the Peninsula, formed by the Tide-Waters approaching so near to each other as to flow within 4 Miles, from Apoquinomy to Bohemia; We have proved, by many more Witnesses, another Isthmus, a little more North than our first, being 22 Miles asunder, and formed by the very Head of the great Bay of Chesopeak and great River of Delaware themselves; we have proved, by many Witnesses, that, within the Peninsula itself, there are many Rivers that interlock. And we have, additionally proved that, within the Peninsula itself, there are several Rivers which rise from one and the same Head, and run, both ways, quite across the Peninsula, from Chesopeak Bay to Delaware Bay or River. And we rely on it that the Heads of such small Branches, as this Witness speaks of, where the Run of Water is but like a Straw, perchance a great deal

less, could not be in Contemplation, nor can possibly, in the Nature of the Thing, from the Isthmus to this Peninsula, which, in all the other Parts of it, is surrounded by the vast Atlantick Ocean. and by the great Bays of Chesopeak and Delaware; but the plain natural Shape of the Land, and the Approach of the flowing Tide-waters, on each Side, or, at most, the Approach of the Bay of Chesopeak, and River of Delaware, to each other, is what forms the Isthmus.

19.

The Defendant wanted to know further, whether the Mouth of Christiana Creek or River lay to the South, or to the North, of the Line lately run by Order of the King in Council; and, in order thereto, cross-examined 4 of our Witnesses.

Samuel Hollingsworth, [*Lib. H. fol. 29. Int. 7. fol. 33.*] *John Musgrave*, [*Lib. H. fol. 34. Int. 7. fol. 37.*]

Knew nothing at all of the Line.

Samuel Preston, [*Lib. H. fol. 104. Int. 7. fol. 108.*]

Was acquainted with the Mouth of Christiana Creek, but was unacquainted with the Line.

Benjamin Eastburn, [*Lib. H. fol. 117. Int. 7. fol. 117.*]

Is acquainted with Christiana River, in Newcastle County, and also with the Line, lately run by Order of the King in Council, between the Proprietors of Maryland and Pensilvania; but the said Line being begun, to the Westward of Newcastle County, can't say whether that Line is to the Northward, or Southward, of the Mouth of the said Christiana River.

20.

The Defendant examined Three of his own Witnesses, to prove where some Places called Kingess, Mill Creek, Charges Creek, or Westerhock lay; who wonderfully disagree therein.

Mordecai Howell, [*Lib. H. fol. 54. Int. 7. fol. 57.*]

Knows a Place called Kingess, and it lies about a Mile and half or two Miles to the Southward of Philadelphia.

George Fitzwater, [*Lib. H. fol. 85. Int. 7. fol. 86.*]

Has heard that a Piece of Land, lying about six Miles below Philadelphia, and on or near Skuykill River, is called Kingess.

Benjamin Banckson. [Lib. H. fol. 83. Int. 7. fol. 84.]

Knows the Places formerly called Kingess, Mill Creek, Charges Creek, or Westerhock. That Kingess is about seven or eight Miles below Philadelphia, and on a Creek falling into Skuylkill River. That Mill Creek and Westerhock are about the same Distance from Philadelphia, and about a Mile from each other.

So that the Kingess is either 1 Mile and $\frac{1}{2}$, or 8 Miles, below Philadelphia.

And Millcreek and Westerhock are about 7 or 8 Miles from Philadelphia, some way or other.

21.

William Price, of Maryland, aged 66, the Defendant's own Witness only, [Lib. G. fol. 59. last Interrogatory fol. 63.]

That he being at Marcus Hook on Delaware, about forty Years ago, [that must be 1700,] several People, who then lived at Marcus Hook, informed this Deponent, that there was a bounded Tree there, called my Lord's bounded Tree; and that Marcus Hook aforesaid, as Deponent has heard and believes, is about 16 Miles up the River Delaware, above Newcastle Town.

The above are the very Words of the Witness; what Lord he, or his Informers, meant, whether they meant Lord Delaware, who went up, and gave his Name to, that River Delaware, or any other Lord, Does not appear from this hearsay Evidence. And it's observable, that the Defendant has examined 71 Witnesses of his own, from the Age of 102 downwards, and cross-examined 27 of ours; and we have examined 70 Witnesses of our own, and cross-examined 10 of his; and yet, not a Syllable of any such bounded Tree, is mentioned, by any one but this single Man; and that too, in answer to the last general Interrogatory, whether he knew any thing more for the Benefit of the Defendant?

22.

The Defendant examined two Witnesses of his own, to prove that his Ancestor in 1682, went up Delaware to Chester, in order to make an Observation, and how he was received there by the People; and that, in going back, at Marcus Hook, &c. he forewarned a few Inhabitants from paying any more Quit Rent to Mr. Penn.

James Widdouas, aged 76, Defendant's own Witness only, [Lib. H. fol. 77. Int. 10. fol. 77.]

Has lived in Chester County ever since 1681. That in 1682, the

Lord Baltimore came, out of Maryland, to the Head of Apoquimomy, and from thence, up Delaware, as high as a Place then called Upland, and now called Chester, accompanied by several Gentlemen, who came in two Boats. He has heard from Persons then present, and believes, that the Lord Baltimore then declared that he intended to go higher up the River, and had got instruments with him, in order to see how far his Dominion reached, but, that he was stopt by the People who lived thereabouts, who were Swedes, Dutch and English, who brought out Guns and Staves against him. Does not know who the People were, that accompanied the Lord Baltimore; but has heard and believes that one of them was a Captain of a Man of War. That he landed at the House of one Robert Wade, on the Southwest Side of Chester Creek, and to the best of Deponent's Remembrance, continued there, for about two or three Days, with Governour Markham, then Governour of Pensilvania. That he had been credibly informed from Persons, who said they had been present at the same Time, that the Lord Baltimore caused an Instrument to be set up to know how far his Government extended? And that it was then agreed, by the Artist there present, that it reached to the Place where Philadelphia now stands, which Land, at that time, was possest by Swedes under the Government of York. and not then bought of them by William Penn Esq;

The same, to the 11th Interrogatory, fol. 81.

That when Lord Baltimore left Chester Creek aforesaid, on his Return, he called at the House of James Brown, at Marcus Hook, a small Town, now called Chichester, about 4 Miles below Chester Creek, where the Deponent then lived: and desired this Deponent to tell the said Brown (who was then from home) that he lived upon the said Lord Baltimore's Land, and that if he paid any more Quit-Rents to Mr. Penn he would be to pay them over again; for it was his Land, and he would have his Right. And the Deponent was informed, that he went to every House, on the Waterside, and in like manner forewarned the Inhabitants not to pay any more Quit-Rents to Mr. Penn.

The same, to the last Interrogatory, fol. 83.]

Has heard and believes that Lord Baltimore, about the same time, caused a Fort to be built, upon or near to Christine Creek, but this Deponent has never seen the same, nor can give any particular Account thereof.

If this single Hearsay Witness (to every thing but James Brown) amounts to any Proof, why then the Defendant was, very early, going by the Degrees, and by the Degrees as then known 50 Years after his Charter; and to th

Extent of that modern discovered Degree; and confessedly (by the present Answer) a great deal above every Part of the Peninsula and truly here was an early, and a very high Claim; but, most unfortunately for him, three Years after this, viz. in 1685, upon his own Petition, the King in Council adjudged, that the three lower Counties were not included in his Charter, and were not granted to him, and consequently, this, that he verbally claimed of James Brown, was not his Land, nor his Right.

Richard Buffington, the Defendant's Witness only, aged 85,
[*Lib. H. fol. 88. Int. 10. fol. 88.*]

Has lived above 63 Years on the West Side of Delaware, in the Place now called Chester County. Near 60 Years ago he heard, from creditable Persons, that the then Lord Baltimore, was at a Place called Marcus Hook, about 4 Miles below, and to the Southward of the Place now called Chester Town. He believes the said Lord Baltimore came from Maryland, and as this Deponent was informed, from the said creditable Persons, forwarned the Inhabitants from paying Quit-Rents to William Penn Esq; and saith [said] that the Land they lived on was, or would be, his.

In this old hearsay Story, there is at least some Mistake in Time: for if Governour Markham, the Governour of Pennsylvania, was along with Lord Baltimore, he was Kinsman to, and Governour under Mr. Penn, and then Pennsylvania was not under the Government of New York. Nay, if there is any Truth in this Story, it must have been after Mr. Penn had the Lower Counties also; for that (as he says, he heard) my Lord forbid some Tenants on the Water-side paying any more Quit-Rents to Mr. Penn.

23.

Mordecai Howell, aged 78, [Lib. H. fol. 54. Int. 5. fol. 54.]

Is the Defendant's own Witness only, and says, that, about 1682, he came up the Bay of Delaware, in Company with the Ship in which the Plaintiffs Father was. That he landed, some time before Mr. Penn, at Newcastle Town, and was there when he landed at the said Town; but knows not how long he stayed there. That some time afterwards, Mr. Penn went to one Sanderlin's, at a Place then called Upland, but now Chester, which is reputed to be about twenty Miles above the Town of Newcastle. That he can't tell how long he stayed there, nor knows for what end or purpose he went there, but has heard it talk, among the People, that it was with Intent to have built a City there, but that he and Sanderlin could not agree.

It is undoubtedly true, that Mr. Penn, when he landed, found so many ancient Settlers, under Swedish and Dutch Titles, and so many more, under more modern Grants from the Duke of York, that he was at a loss to find a Space, in any proper Seituation. fit for so large a City as he then intended, and afterwards founded, free from some private Rights and Possessions; and at length having pitched upon a proper Scite for it, between two navigable Rivers, he was forced to buy it from the private Proprietors, in order to form his regular City Philadelphia, which is an oblong Square, of two Miles, by one Mile.

**Zeb. Hollingsworth, of Maryland, aged 43, [Lib. G. fol. 64. Int. 10. add. fol. 70.]*

Has several times heard both his Father and Mother declare that the Plaintiffs Father had an Observation taken, in order to fix a Place to build Philadelphia on, by an Artist or Mathematician, at the House of Robert Wade; at the Mouth of Chester Creek, on Delaware. That the said Artist then told Mr. Penn that he was, there, within the Baltimore Grant. That some warm Words past between Mr. Penn and the Artist, which the Deponent has heard was, because Mr. Penn believed the said Artist was mistaken in his Observation. That this Deponent's Father sometimes followed the Business of a Blacksmith, sometimes building Houses, and at other times surveying Lands in both Provinces of Maryland and Pensilvania.

This Witness has before sworn he has a Dispute under a Maryland Right, with a Pensilvanian under a Pensilvania Right. And besides, this is but a Hearsay from his Father and Mother, neither of which does he pretend is dead, and we have never cross-examined this Man.

Andrew Barry, of Maryland, aged 40, [Lib. G. fol. 72. Int. 10. addit. fol. 73.]

That he was desired, as a Magistrate of Cecil County in Maryland, to take the Affirmation of one Lydia Hollingsworth, now deceased. He accordingly did administer an Affirmation, whereon she declared to this Deponent, that, between 50 and 60 Years before that Time, she was at the House of one Robert Wade, at the Mouth of Chester River, on Delaware River; That she was there when the Plaintiffs Father was there with an Artist, taking an Observation. That the said Artist then told the said Penn, that he was within the Lord Baltimore's Grant. And the said Lydia further declared, that the said House, where the said Wade then dwelt, was reputed to be in Maryland. And that, upon the said Artist telling the said Penn as aforesaid, they then went, as she supposed, further up the River Delaware,

and fixt the Town at the Place where the City of Philadelphia is now built. The said Penn, as she supposed, if the Artist had not informed him as aforesaid, intended to have built a Town on, or near to, the said Chester River.

Surely this Man did not administer an Affirmation, and take the Woman's Declaration viva voce. He omits specifying how she declared, but it must be presumed to be in Writing; and if so, the thing itself ought to appear, and not his Account of it only. I suppose there is something in the Affirmation itself, that would hurt them, so it is concealed.

And it's certain the Artist, as he is called, must have been mistaken, to say that Chester Creek was within Maryland, for Chester Creek is above the Northernmost Part of the Lower Counties, consequently, as Part of these Lower Counties is up in the Main Continent, what is above them must be further up in the Main Continent, and could be no Part of a Peninsula.

But his Mistake was, that he was measuring the Degree in 1682 (not as known in 1632) and was going to the Extent of that Degree too.

24.

**Anne Holy, of Maryland, the Defendant's own Witness, aged 60, [Lib. G. fol. 103. Int. 8. addit. fol. 106.]*

When she was a Girl, Lord Baltimore lodged at her Father's House. And she heard that, about that time, an East and West Line was run, by the said Lord Baltimore and others, from the Mouth of Octorara, to Naaman's Creek; and that there was a Line of markt Trees lately to be seen, as she has heard. And further declares, that the Pensilvanians have eneroacht upon her Husband, and taken Lands from him, that were patented to her Husband under Maryland Rights, and that the last Line, run by Order of the King in Council between the two Provinces, run through her Husband's Plantation.

This Woman swears herself interested, and tho' the Defendant began to examine her, to prove this old Line run in 1683, yet, upon second Thoughts, he dropt making any further Proof thereof, on his Part, save what fell occasionally from his Witnesses.

But he made us ample Amends, for he was resolved he would prove the little Loghouse, which he says was built in 1683.

25.

And to that purpose has examined the 14 following of his own Witnesses, and cross-examined two of ours, viz.

Hugh Terry, of Maryland, Defendant's own Witness only, born in 1699, [Lib. G. fol. 39. Int. 5. addit. fol. 40.]

Has heard his Father Thomas Terry say that there was a Fort at Christiana, that was a Charge to the People of Maryland: that it was built by one Talbot, and that one Murray was Captain of the Fort, and that Provisions were prest, to support the People in the Fort. from every Man's House, in the Neighbourhood of the Place where Bohemia Ferry in Cecil County is now kept, except his said Father's.

NOTE WELL.—Allowing this Account to be very true, the Fort carried no Subjection beyond its own mere Contents of fourteen Feet by ten Feet, for they went down into Maryland, to press Provision for it, into Cecil County, and did not pretend to raise or press Provisions for the Fort from the Pennsylvania Tenants in Newcastle County; although several such were then settled between the Fort and Maryland.

**Zeb. Hollingsworth, of Maryland, Defendant's own Witness only, born in 1697, [Lib. G. fol. 64. Last Interrog. fol. 72.]*

Adds, that he has heard there was a Fort kept at Christiana Bridge, in Colonel Talbot's Time, that one Kearsey supplied the said Fort with Provisions, upon Colonel Talbot's Account, but when Talbot left the Province for killing of one Rouseby, there being nobody to pay Kearsey for finding Provisions, the said Fort broke up. But this is an interested Witness, as he himself swears.

**Anne Holy, of Maryland, Defendant's own Witness only, born in 1680, [Lib. G. fol. 103. Int. 5. addit. fol. 104.]*

Has heard there was a Fort kept at Christiana Creek, near where Christiana Bridge now is; but on what Side, by whom built, or at whose Expence, knows not; but believes it was maintained by the Government of Maryland, because the People, in the Fort, used to have Provisions from her Father's House in Maryland. That the said Fort was kept up some time, but how long can't tell; but it was, until the Killing of one Rouseby by Colonel Talbot. That the said Fort lay near West from Newcastle Town, and distant about five Miles thence, as she believes.

Aaron Latham, of Maryland, the Defendant's own Witness only, born in 1680, [Lib. G. fol. 76. Int. 5. addit. fol. 76.]

Knew a Fort that was built near the Place where Christiana Bridge is, and that it was called Talbot's Fort and it stood on the West side of Christiana Creek and heard it was built by one

Colonel Talbot, and was told by the Men in the said Fort, that they were maintained at the Expence of the said Colonel Talbot. That it was about 50 Years ago [1690] that he saw the said Fort, and that he remembers it was kept up about two or three Years. That Newcastle Town lay E. S. E. from the said Fort. That the said Fort was about 5 Miles distant from Newcastle Town.

Thomas Price, of Maryland, the Defendant's own Witness only, born in 1676, [Lib. G. fol. 86. Int. 5. addit. fol. 89.]

That, about 50 Years ago [1690] he saw a little Log-Fort, at the foot of Christiana Bridge and some Men in it. That the said Fort was kept by Colonel Talbot, as he believes, to keep the People of Newcastle off. That the said Fort was on the Westward side of Christiana Bridge, and kept up five or six Years, and lay, as he believes, about W. N. West from Newcastle Town, and distant from Newcastle about six or seven Miles.

Robert Money, of Maryland, the Defendant's own Witness only, born in 1675, [Lib. G. fol. 36. Int. 5. addit. fol. 37.]

When he was a Boy, he has heard several People speak of a Fort at Christiana that was maintained at the Expence of Lord Baltimore, but for what time can't exactly charge his Memory, but believes it to be about four Years. And that it was kept up about 57 Years ago [1683—So this Witness corrects the Time of the others, who were mistaken] Says his Information was from several Persons who he understood to be Soldiers in said Fort, the Name after which was Murrey.

Simon Johnson, of Maryland, the Defendant's own Witness only, born in 1674, [Lib. G. fol. 115. Int. 5. addit. fol. 115.]

Heard there was a Fort on the West side of Christiana Creek, in Colonel Talbot's Time. And that Colonel Talbot used to buy Corn and Beef in Maryland, and sent it to the said Fort, this Deponent having seen some of the Provisions brought. He has heard the said Fort was built by Colonel Talbot. That, after Colonel Talbot left the Province, the Fort broke up, for want of some Person to supply the Men there with Provisions. That the Place where he has been informed the said Fort stood, lay Westward from Newcastle, distant about five Miles.

William Price, of Maryland, the Defendant's own Witness only, born in 1674, [Lib. G. fol. 59. Int. 5. addit. fol. 59.]

Has been at a Place near Christiana Bridge, where, he was informed that a Fort stood. That his Father informed him he helpt to build it. That it stood on the Northwest Side of the said Creek. His Father informed him that Colonel Talbot went, with the People, to build said Fort. The Place where

the said Fort stood was between 5 and 6 Miles distant, to the Northwestward of the Town of Newcastle, and that the said Fort was kept up, for some Years, as he was also informed by his Father, at the Expence of the Province of Maryland.

Samuel Hollingsworth, our Witness, but cross-examined, born in 1673, [Lib. H. fol. 29. Int. 4. fol. 32.]

Has formerly heard that there was a small Fort, called the Maryland Fort, about five Miles Westerly from Newcastle, on the Northwest side of Christiana Creek, and near a Bridge over the said Creek, by Order of the Lord Baltimore, and that the said Fort was kept and maintained, some Years, at the Expence of Lord Baltimore, or the People of Maryland.

John Ryland, of Maryland, the defendant's own Witness only, born in 1672. [Lib. G. fol. 46. Int. 5. addit. fol. 47.]

He has heard, above 50 Years ago [that must be before 1690] a Fort was kept, upwards, commanded by one Captain Murray, and that Colonel Talbot was concerned in the said Fort. In what place it stood, knows not. Has been informed they prest Provisions for the said Fort in the Neighborhood of Bohemia Ferry; How long it was maintained, or at whose Expence, cannot tell.

Walter Scott of Maryland the Defendant's own Witness only, born in 1671, [Lib. G. fol. 52. Int. 5. addit. fol. 52.]

That above 150 Years ago [before 1690] he lived with one Casparus Herman. That being sent on an Errand, to Bread and Cheese Island on Christiana Creek, going over Christiana Bridge, he saw a small strong Loghouse, which was called the Fort. That there was several Port-holes in the said House. That it stood a little way off the said Bridge. That one Murray was said to command it. And this Deponent saw some Soldiers that belonged to the said Fort. That he knew one Thomas Mansfield, a Press-Master for Cecil County, to press Provisions in Cecil County aforesaid, for the Men in the said Fort. That the said Fort was kept up until Colonel Talbot absconded from his usual Abode for killing one Rousby. But what Length of Time it was kept up, can't remember. That the said Fort stood about 6 Miles W. N. West distant from Newcastle Town.

Otho Othoson, of Maryland, the Defendant's own Witness only, born in 1668, [Lib. G. fol. 28. Int. 5. addit. fol. 29.]

Has known a Fort, between the Head of Christiana Creek and White-Clay Creek, in the County of Newcastle. And was once at the said Fort. And it stood on the North side of Christiana aforesaid. Who built it, he knows not, or at whose Expence, or how long it was maintained, but it was called Col-

onel Talbot's Fort. And that the said Fort was between 4 and 5 Miles distant Northward, or Northwest, from Newcastle Town, as he believes.

Eliz. Mercer, of Maryland, the Defendant's own Witness only, born in 1667, [Lib. G. fol. 100. Int. 5. addit. fol. 100.]

She knew a little Loghouse, near Christiana Creek, which was called the Maryland Fort—Believes it was on West-side of Christiana Creek,; That it was built by Colonel Talbot's Men, above 50 Years ago. It was kept up, some Years, by the said Colonel Talbot, but can't say how long. Does not know how the Fort lay from Newcastle. That her Father's House was computed to be twelve Miles distant from Newcastle. That the Fort lay two Miles nearer Newcastle than her Father's House. That when the People went over the Bridge from her Father's House, they reckoned themselves in Newcastle County; That the other Side, over the Bridge, next her Father's House. they reckoned in Pensylvania; That, about the Year 1679. she came into the Country, and Courts were then held at Newcastle Town, in the King's Name.

John Musgrave, our Witness, but cross-examined, born in 1667, [Lib. H. fol. 34. Int. 4. fol. 36.]

That he knew a small Log-Fort, that was built, after the running Colonel Talbot's Line, about four or five Miles to the North-Westerly of Newcastle, and on the North-West side of Christiana Creek, by the Direction of Lord Baltimore, or Colonel Talbot, as the Affirmant has heard, and was maintained, for some short time, by People from Maryland.

Mordecai Howell, the Defendant's own Witness only, born in 1662, [Lib. H. fol. 54. Int. 6. fol. 56.]

Says that some time in the Year 1683 he was going after a Runaway Servant, and was then shewed a Fort, made with Sapling Poles, as he believes, about 14 Feet square, and told, that it was built and maintained by Order of Lord Baltimore. That he saw some men, and some Fire-Arms, in the same, but knows not the Number.

James Morgan, of Maryland, the Defendant's own Witness only, born in 1660, [Lib. G. fol. 91. Int. 5. addit. fol. 92.]

Has heard there was a Fort kept at Christiana, commanded by one Philip Murray, and that he inquired of some Irishmen who kept the said Fort, what they kept the said Fort for? He was told by them, it was to keep Possession for my Lord. That he has been told that 7,000 Pound of Tobacco was levied in Cecil County, for maintaining the People of the same Fort, but how long it was maintained, knows not, but that it was dropt on Colonel Talbot's killing one Reusby.

How some Persons, for Opposition sake, persue Matters to their own hurt! And what do all these last Sixteen Witnesses amount to, at the very utmost?

Why, there was a Fort, that was built by Colonel Talbot, or Lord Baltimore, or somebody.

It was maintained, for some short time, either by Colonel Talbot himself, or by Lord Baltimore, or by the People of Maryland; and then it was dropt, when Colonel Talbot killed Rousby. For there was nobody then to pay the Expence of it.

And it was situated just by Christiana Bridge, which, by the way, is just where the Swedish and Dutch Fort was.

And now, what Pity it is, that we, by our great Knowledge, should have imposed on my Lord, in the present Agreement, and that he has not, by this present Agreement, quite up to this Fort of his? Or rather, what Pity is it, that he was not precisely limited to this Fort?

In which last Case, we should have saved a Tract of Land, 4 Miles broad, by five whole Degrees in Length, which we have now granted to him, North of, and above that identical Spot of his own former Claims or Encroachments.

Which very Tract contains our antient Town of Nottingham, the richest and most fertile Spot in our whole Province, but which we have now given up, to buy our Peace (as we vainly imagined) after having suffered much more from these ruinous expensive Contests, than Strangers can easily believe or be made sensible of.

Yet he insists, very calmly, that in this Grant there is no Consideration moving from us, we take all the Benefit, and he takes all the Loss, that is, if he is to be believed.

26.

The next thing my Lord Baltimore attempted to prove was, that he had exercised the Government, and he had received the Quit-Rents, in the lower Counties. To which Purpose he examined the three following Witnesses of his own, viz.

Colonel John Ward, of Maryland, the Defendant's own Witness only, aged 67, [Lib. G. fol. 31. Int. 5. fol. 32.]

Has never heard that Lord Baltimore, or any of his Ancestors, exercised any Power or Authority of Government in the 3 lower Counties; and has heard that the Plaintiffs and their Ancestors, have exercised the Powers of Government in the said Counties. Knows not nor has heard, that the Inhabitants of

the said 3 lower Counties have ever paid any Quit-Rent to the Lord Baltimore, or his Ancestors: and has heard several of the Inhabitants of the said three lower Counties say that they had never paid any Quit-Rent to the Plaintiffs or their Ancestors. He has never heard of any other or more Forts, that was erected and kept in the 3 lower Counties, or on the Borders thereof, but one, which he has heard was kept on the North-side of Christiana Creek, or thereabouts, which he believes is in the County of Newcastle, by the Ancestors of the Lord Baltimore, about Colonel Talbot's Time, and that one Drake prest Men to assist those that were in the said Fort, upon a Rumor the Fort would be attackt by the Pensilvanians. And has heard Edward Larrimore, Christopher Mouns, John Wheeler, and several others of the then antient Settlers, declare they had seen the said Fort.

Charles Hilliard, Esq., the Defendant's own Witness only, aged 63, [Lib. G. fol. 158. Int. 5. fol. 163.]

Neither knows, nor has heard, of any Acts of Government done, or exercised, by Lord Baltimore, or his Ancestors, in the three Lower Counties, but that all Acts of Government, for many Years last past, have been exercised by the Proprietors of Pensilvania in the said three Lower Counties. Never knew of any Quit-Rents paid to, or demanded by, Lord Baltimore, or his Ancestors in the said three Lower Counties, but he himself, and divers others, have paid Quit-Rents to the Proprietors of Pensilvania for Land in the three Lower Counties aforesaid. He knew a Fort, in Newcastle Town, held under the Government of the Plaintiffs Ancestors, but knows not of any other Fort in, or bordering on, the said three Lower Counties. That the said Fort at Newcastle Town aforesaid, was maintained and kept up at the Expence of the Inhabitants and the Proprietors of Pensilvania, as he has heard from several of the Members of the Assembly of the said three Lower Counties at Newcastle. but how long the said Fort was maintained, he knows not.

John Holliday, the Defendant's own Witness only, aged 39, [Lib. G. fol. 170. Int. 5. fol. 173.]

Has never known, or heard of, any Acts or Powers of Government exercised in the three Lower Countys, but by and under the Person who was Governor of the said three Counties, and at the same time Governor of Pensilvania. Knows not of any Quit-Rents being paid to the Proprietor of Maryland, but has frequently heard that several of his Neighbors have paid Quit-Rents to the Proprietors of Pensilvania, for Lands held in the upper Part of Kent County aforesaid. Has heard that

the Lord Baltimore had a Fort at Christiana, in Newcastle County, and a small Number of Men, and that the said Fort was kept up, for some time, by Lord Baltimore.

NOTE.—The three last are the Defendant's own Witnesses, whom we have not examined to any one single Word. And they did not please him: So he varied the Interrogatory, by an additional one, dropping the Government and the Quit-Rents and confining it to the Fort only, an account whereof you have had before.

You'll please to observe that the Defendant has sworn that his Ancestors all along exercised all Acts of Proprietorship and Government in the three Lower Countys. Whereas he is, thus flatly, contradicted by his own foregoing Witnesses which he examined in Chief on that Head, by many more of his own Witnesses who speak of that Matter Occasionally, by the whole String of our Evidence also, (and by his Witness Mr. Sharpe, the Clerk of the Council, and by all the Records of the Council Office, from the Year 1702, to this Time.)

But this is a Trifle (with him.)

27.

He had also sworn four other Facts, in his Answer, 1. That the Province of Pensilvania is contiguous to New Jersey. 2. That it is not contiguous to the Lower Countys. 3. That Pensilvania is on our side, and the Lower Counties on the other side, of the Bay of Delaware. 4. That Pensilvania lay on the West side, and the three Lower Countys on the East side of the said Bay and River of Delaware; and he has examined divers Witnesses to prove these Facts; but they being most notoriously false and untrue, not only the following Witnesses, examined by himself in chief thereto, but all the Witnesses that are examined in the Cause, falsify his Answer, in the most direct manner that is possible.

Charles Hilliard, the Defendant's own Witness only, aged 63
[*Lib. G. fol. 158. Int. 2. fol. 159.*]

Says that the three Lower Counties are bounded to the North by the Province of Pensilvania, on the East on Delaware and the Ocean, and Southward and Westward by the Province of Maryland. That the Jerseys lie on the East side of Delaware, and the Province of Pensilvania, and the three Lower Counties on the West side of Delaware.

John Holliday, the Defendant's own Witness only, aged 39, [Lib. G. fol. 170. Int. 2. fol. 170.]

Is acquainted with the Countys of Newcastle and Kent, which

are bounded on the North by Pensilvania, on the East by Delaware, West by Maryland, South by Sussex County, with which he is but little acquainted, having been there but once. That the Jerseys lye on the East side of the Bay and River Delaware. And the Province of Pensilvania, and the Counties aforesaid are divided from New Jersey, by Delaware.

Thomas Hynson Wright, of Maryland, the Defendant's own Witness only, aged 52, [Lib. G. fol. 251. Int. 2. fol. 251.]

Has known the three lower Counties upwards of twenty Years. has resided near to them. and been frequently in them. And has understood, by the Inhabitants of those Countys, that they were bounded on the South by Indian River, and on the East partly by the Ocean and Delaware Bay, and on the North some small Distance to the Northward of Newcastle, and on the West, as far as the running Water of the Branches that drain into Delaware. That New Jersey is not contiguous to Maryland and Pensilvania, or either of the three Lower Counties, but is divided from the same by the Bay and River of Delaware. Knows the Bay and River of Delaware, and understands from the Inhabitants of the said three Lower Counties, that they are bounded, on the East, by the Ocean, from Indian River to the Mouth of Delaware Bay; and from thence, to the Northward of Newcastle, by Delaware Bay or River, still on the East. That he always understood that the Province of Maryland lies on the West side of the Ocean and the said Bay or River Delaware; and that the Province of Pensilvania lies to the Northward of Maryland, and on the West side of the said River Delaware; and the said Province of East and West Jerseys lie on the East side of the said Bay or River of Delaware.

NOTE — This Witness fortifies our Cape, and corroborates our Evidence about the South Bounds of Sussex, for he has known it but from the Year 1720, or thereabouts, and where does he place our South Bounds? why at Indian River, greatly below my Lord's new Cape Hinlopen, almost as low as our true old Cape Hinlopen; and our Witnesses agree, tho' our Bounds were to the old Cape Hinlopen, which is Fenicks Island, on the Branch of Assawaman, yet, about 1696, upon one Peter Waples running away from Maryland to Indian River for Debt, the Sheriff of Maryland, then pursued him thither, and that, since that Time, (which was long before this Witness's Knowledge) my Lord by force, made the few People submit, up as high as to Indian River.

This Observation, kept in mind, will be of great Use, in many other Places.

28.

As the Defendant has so strongly sworn to all Acts of Ownership and Proprietorship, (as well as of Government) having been exercised by himself and his Ancestors, within the three Lower Counties, so he struggled hard to prove a very few Instances of Settlements of Lands under Maryland Rights, every one of which turns out against him.

For Method sake we will begin first with the County of Newcastle.

And first of these, as to a particular Tract said to have been surveyed for one Henry Ward.

**Benjamin Pierce, of Maryland, the Defendant's Witness only. aged 28, [Lib. G. fol. 94. Int. 21. fol. 95.]*

Has dwelt above 20 Years in Cecil County, Says that he, who married with the Daughter and Heir at Law to one Henry Ward, amongst his Papers, found a Deposition, dated in March 1724, made by the said Henry Ward, the purport of which Deposition was, that one Evan James had taken a Lease, of the said Ward, of certain Lands bordering upon Newcastle County, claimed by the said Ward under Maryland Rights; that, on complaint of some Welsh People, to a Magistrate of Newcastle County, the said James was taken up, on a Warrant issued by said Magistrate, and was obliged, before the said Magistrate, to deny that he had taken any Lease from the said Ward, otherwise he had been sent to Newcastle Prison; and the said Evan James afterwards, claimed the said Land under a Right from the Proprietors of Pensilvania. And that, by another Deposition, made by the said Ward, found also among the said Ward's Papers, it appears to this Deponent, that one Alex. Lewis, also, had taken a Lease of Land, from the said Ward, that a like Complaint was made by the Welsh People, and the said Lewis was obliged, in some manner, to deny his taking any such Lease, and, since, claimed the said Land under a right from the Pensilvania Proprietors. And well knows that one Evan Jenkins, about 5 Years since, has, under a Pensilvania Right, entered and seated on some of the said Tract, now claimed by this Deponent in Right of his said Wife.

**Idem to the 11th add. Int. fol. 98.*

Knows of no other Lands layd out, or possest, under Maryland Rights, in the Lower Counties, the Quit-Rents on those beforementioned, due to the Year 1712, being paid to the Receiver of Lord Baltimore, as by Receipts under old Mr. Heath's Hand, a Receiver for the said Lord, appears.

This Witness swears himself interested, speaks entirely out

of Depositions which are not produced, and would not be Evidence if they were, being Ward's own Depositions to prove his own Right, and from Receipts which are not produced.

**Richard Thompson, of Maryland, the Defendant's own Witness only, aged 55, [Lib. G. Fol. 109. Int. 21. Fol. 110.]*

Has dwelt 20 Years in Cecil County. Knows of no Ineroachments made by the Marylanders on the Inhabitants of Pensilvania, or their Land, bordering on, or in the Lower Counties. But says that, since 1723, and above 6 Years ago, David Lewis, and several other Persons, have, under Colour of Pensilvania Rights, taken Possession of about 400 Aeres, (Part of two Tracts containing 2500) granted above 60 Years ago, as he has reason to believe, having seen the Grant under Maryland Rights, to one Henry Ward. And that the said Lewis and others hold the said Lands, as in Newcastle County. That the Deponent, at the request of Henry Ward, Son of the said Henry, went to assist him, in making a Re-survey of the said Land, but was, by the Pensilvanians prevented. Says that the People of Newcastle County, above 16 Years ago, attempted to take some of the Lands, whereon the Deponent now lives, from him, by running Lines thro' his Plantation, but he, by Threats, has held his Possession. Says there formerly was a main Road, through Part of the said Land of Henry Ward, cleared and kept up, by the People of Cecil County; but that the Inhabitants of Newcastle County, now, prevent their keeping it up, and clear it themselves.

This last Witness swears he has disputed Lands. And we are to have a geat deal more about this Henry Ward, but hitherto, one believes the Land had been granted to Ward, and another talks as if he had claimed it; but no pretence that Ward, or any in his Right, had ever settled upon it, or made any Improvement, and we have proved how Maryland Grants are made.

Laurence Gailshriott, of Maryland, the Defendant's own Witness only, aged 60, [Lib. G. fol. 49. Int. 21. fol. 49.]

Has dwelt 20 Years in the Borders of Cecil County. Knows that two Settlements have been made, within 10 or 12 Years past, by Pensilvanians, on Land for 40 Years supposed to be within the Limits of Maryland, one about a Mile to the Southward, and another about a Mile to the Northward, of the Place where the Deponent lives. The last of which was formerly surveyed, and patented, for Henry Ward, under a Maryland Right. That this Deponent and one Richard Thompson, above 20 Years ago, carryed the Chain in surveying the said Land for the said

Henry Ward, [Why the last Witness, Thompson, says it was granted to Ward 60 Years ago, and he saw the Patent; what was it granted 40 Years before it was surveyed?] Knows of no encroachments, by the Marylanders on the Pensilvanians. That one Thomas Noxon, a Surveyor under the Pensilvania Government, surveyed the said Land, to the Southward of where the Deponent lives, for one John Toland who settled the same; and he or his Family now lives at the same, under the Government of Pensilvania.

Three Witnesses have now spoke to Henry Ward's Land, and no one of them pretends that an Inch of it was ever settled under Maryland.

Thomas Price, of Maryland, the Defendant's own Witness only, aged 64, [Lib. G. fol. 86. Int. 21. fol. 86.]

Has dwelt for above 20 Years in Cecil County. That one Edwards about 15 Years ago, and several other Welsh People, since, have, seated under the Pensilvania Proprietors, part of a Tract of Land, taken up under Maryland Rights, for one Ward, under the Lord Baltimore, and reputed to lie in Cecil County in Maryland, and then held by one Vander Skeyden, Mother and Guardian of Henry Ward, a Minor. That the Deponent at her Request, forbid two of the said People to seat on the said Land, and, by the Son of one of them, who persisted in doing it, he was told, that his Father, who could not speak English, would carry the Deponent to the Goal of Newcastle County, if he gave him any Hindrance in seating the said Lands, Does not know whether the said Lands are in, or adjoining to, either of the 3 Lower Counties, but the People seating the said Land under the Pensilvania Proprietors are under the Government of the said 3 Lower Counties.

Obed. Obedience, of Maryland, the Defendant's own Witness only, aged 70, [Lib. G. fol. 55. Int. 21. fol. 56.]

Has dwelt for 20 Years at Back Creek, in Cecil County. Knows that one Edwards, and other Welsh People, since 1723, under pretence of a Right from the Pensilvania Proprietors, have entered and possess themselves of some Lands, which were thentofore surveyed for one Ward, Father of Henry Ward, under a Maryland Right. And the said Land was called Long Acre. And that one Mr. Vander Skeydon, Guardian of the said Henry Ward, informed this Deponent that he paid the Duties for the said Land, to the Proprietor of Maryland, during the Minority of the said Ward, and that the said Edward's Children, and others, now live on the said Land. That the said Persons, who settled the said Land as aforesaid, told this Deponent that one Evans, a Magistrate of Newcastle County, gave them a Warrant

for the said Land; but never heard the said Land was surveyed under a Pensilvania Right; and believes there are near twenty Settlements on the said Land. Knows of no Ineroachments made by any of the Marylanders on the Inhabitants or Lands of Pensilvania.

Instances of this sort being extremely scarce, the Defendant has bestowed five Witnesses on this single Tract of Henry Ward's, no one of which pretends that Ward had ever settled a single Foot of this Land, nor does any one of them venture to say it was in Newcastle County. Some say it was in Cecil County, some that it was reputed to be in Maryland, or within the Limits of Maryland, another that it was bordering upon Newcastle County. If it had been in Newcastle County, we had a Right to it, if it was not in Newcastle County, why then, no Survey of it, nor even Settlement if such had been actually made under Maryland, was any Assertion of the Maryland Claim. We come to two Instances relating to Edward Divier, at the Iron Hills and David Parry.

William Price, of Maryland, the Defendant's own Witness only, aged 66, [Lib. G. fol. 59. Int. 11. add. fol. 62.]

Has heard there were about 56 Years ago, [1684] taken up and surveyed, several Tracts of Land, near the Iron Hills, in Newcastle County under Maryland Rights, one of which Tracts was for one Edward Divier, but does not remember to have heard that any of the Lands were ever settled under Maryland; except by the said Edward Divier's planting some Peach Trees on the said Iron Hills.

This is hear say, and still no Settlement made by Maryland.

**Adam Short, the Defendant's own Witness only, aged 78, [Lib. H. Fol. 60. Int 8. Fol. 61.]*

Says that, in or about the Year 1682, Daniel Tewis had 1000 Acres of land, called the Iron Hills, taken up, for him, under the Defendant's Ancestors, And that, about the Year 1684 or 1685, Philip Lines, one Gossager, and one Lawellins, had 1000 Acres of Land, each, taken up, for them, under the Defendant's Ancestors. All which Lands, about 39 Years ago [1701] were, by Warrant under William Penn. then granted to some Welch People, as Part of the Welch Tract, and have been ever since held, under the Plaintiffs Ancestors, and themselves, as Part of Newcastle County. Further says, that none of the said Lands were ever seated, by any Persons, under Right from Maryland, before the Welch took Possession of them. Further says that, about a Year after the said Welch Tract was surveyed, one David Perry took up a Tract of Land, under the Government

of Maryland, which the said Perry seated, improved, and held till about 20 Years ago, at which Time the Deponent purchased and seated it, for some small Time, and, till some Welch People by force, dispossessed him of it, who have held it ever since. Further says, that the Surveyor, who laid out the Welch Tract, declared, at the taking up the said Land, that it was not, within the Welch Tract.

The Witness chuses not to tell us, where these Lands lay, but wherever they lay, he owns they were never seated by any one Marylander. And he swears himself interested in the Question.

**Richard Thompson, of Maryland, the Defendant's own Witness only, aged 55, [Lib. G. fol. 109. Int. 11. add. fol. 113.]*

Has heard that a Tract of Land, in the County of Newcastle, was formerly taken up, and actually possess, by one David Parry, under a Maryland Right; and another Tract of Land, in the same County, taken up, and reputed to belong to one Lewellin, under a Maryland Right, are now claimed, and possess, by People under pretence of Rights from the Pensilvania Proprietors. [Has not he shewn a just Reason for it, that both those Tracts were in Newcastle County?] And further says, that the said Persons with Pensilvania Rights entred into the said Parry's Land, within a Year after his Death, and before the Persons, who had a Claim to it under Maryland Rights, attempted it. Says he heard the aforesaid Henry Ward frequently say, that he paid the Quit-Rents for the Lands mentioned in his former Answer to 21 Int. to the Lord Proprietor of Maryland.

This Man appeared before to be interested, but if not, yet, now we hear, that Parry's Land lay in Newcastle County. But hitherto, there is not an Inch of Land, pretended to have been settled under Maryland. And it is owned, that tho' there was a Maryland pocket Survey by Maryland, yet no Possession under it, but that the Pensilvanians possessed the Lands.

We come now to the pretended Instance of Settlements made by the Marylanders in two Manors called Talbot Manor, and New Munster Manor, still as to Newcastle County, which come out to be nothing at all to the Purpose.

William Rumsey, of Maryland, the Defendant's Witness, [Lib. G. Fol. 129. Int. 2. additional Fol. 139.]

Is well acquainted with both the Tracts of Land called Talbot Manor and New Munster, mentioned in some Exhibits marked No 4. Letters Y and Z, (except the Northern Part of

Talbot Manor) That both of the said Tracts lie in Cecil County in Maryland, but the North Part of Talbot Manor, and the North East Part of New Munster, is now possessed by Persons under the Government of Pensilvania. He believes there are upwards of 50 Plantations made and settled, on Talbot Manor, by Persons under the Government of Pensilvania, and as many Plantations made and settled by Persons under Maryland. And that there are two or three Settlements made, partly, on the said Tract of Land called New Munster by Persons under the Government of Pensilvania, and about 6 or 8 Settlements made by Persons under Maryland rights. That he believes there is about 8000 Acres of Talbot Manor, and 1500 Acres of New Munster, that lie to the North of the East and West Line run as aforesaid.

We suppose that the Exhibits, which this Witness refers to, are Copies of the Maryland Grants of those Manors, and what does he prove? that my Lord's People have settled in the lower Counties? Nothing in the World like it, my Lord has granted out two Manors in Cecil County, and his Tenants possess them; Let them do so, That is not in the three lower Counties; If it proves any thing, it is rather that we have made Settlements upon him, than he upon Us. But even that is not the Case; for the next Witnesses unfold the Mystery, and tell us how notably these two Manors are settled, by either of us; and with all tell us the Reason why both Sides have settled upon the Lands described to make those Manors: Part of them lay in Cecil County, those my Lord's Tenants enjoy; Part of them lay in Newcastle County and those the Pensilvania Tenants enjoy. And even this Witness himself supposes it, for he tells us that a great Part of these Manors lie North of the Temporary Line run by Order of the King in Council lately.

James Alexander, of Maryland, the Defendant's own Witness only, aged 51, [Lib. G. Fol. 80. Int. 11. additional Fol. 81.]

Knows that three hundred Acres, being Part of the Manor of New Munster, extends into the County of Newcastle, which said Manor was surveyed under a Maryland Right, in or about the Year 1684. [This is a good (Maryland) Witness, he swears positively to a Survey being made five Years before he was born] That the aforesaid 300 Acres were first settled, by one David Meredith, about twenty Years ago, under the Proprietor of Pensilvania.

Of this Witness's own shewing, we had a clear Right to do so, and no Pretence that any Settlement was made by Maryland.

**Zebulon Hollingsworth, of Maryland, the Defendant's own Witness only, [Lib. G. Fol. 64. Int. 2. additional Fol. 66.]*

Is not acquainted with the North Bounds of Talbot Manor, but knows the Rivers, mentioned in the Exhibit, No 4. Letters Y. and Z, and has heard and believes, that many of the People, settled in Nottingham Township, under Pensilvania Rights, are settled within the Bounds or Limits of Talbot Manor. And the Reason of his Belief is, because, some of the People so settled have themselves told this Deponent that they lived in Talbot Manor aforesaid. And says the North Part of what is reputed Talbot Manor is now in the Possession of the Inhabitants of Chester County, under the Government of Pensilvania, and the South Part of the said Manor, lying towards Susquehannah, and North East Rivers, is now in the Possession of Inhabitants of Maryland. Says he is acquainted with several of the Bounds of New Munster Manor, the greatest Part whereof is now in the Possession of the Inhabitants of Maryland. That one Philip David, Inhabitant of Pensilvania, claims a Part of said New Munster Manor, under Pensilvania Rights, That he himself has a Right to 300 Acres, under a Maryland Right, but that the same is with-held from him, by the said David. [So I suppose he swears to support his own Right.] That he paid Quit-Rents, for the said 300 Acres, while it was payable in Tobacco. [When was that?] to one Edward Mitchell, who was Receiver of the Quit Rents due for Lands thereabouts to the Proprietor of Maryland, altho' the Deponent never was in Possession of the said Land—That the Part claimed as aforesaid, is reputed to lie in Newcastle County. That the other Part of the said Manor is reputed to lie in Cecil County. That he knows that the said Manors have both been settled 25 Years, [i e. 1715.] and he believes longer. That he believes the greatest Part of what is reputed Talbot Manor lies to the Southward of the West and East Line run pursuant to the Order of his Majesty in Council. That he believes the greatest Part, if not all, of New Munster Manor lies to the Southward of the West and East Line aforesaid.

The Defendant must be very adroit indeed to make this an Instance of his settling Lands within the three lower Counties.

We have but one more Instance, on my Lord's Part, tho' several Depositions, relating to any Settlement ever made by him in Newcastle County, viz. by one Ryley.

Otho Othoson, of Maryland, the Defendant's Witness only, aged 72, [Lib. G. Fol. 28. Int. 11. additional Fol. 30.]

Has heard of several Tracts of Land, in the County of New-

castle, which have been taken up and surveyed under Maryland Rights; and he has been upon one Tract of the said Land, called The Lady's Delight, and another Tract of Land called Timber Reach; and also of another Tract taken up under a Maryland Right, by one Ryley, who this Deponent knows settled his Son upon it under the Government of Maryland, near 60 Years ago, [1680] who lived thereon two or three Years.

And what did Ryley do then? Here this Witness drops us, but the following Witnesses inform us.

**Nicholas Ryley, of Maryland, the Defendant's Witness only, aged 58. [Lib. G. Fol. 41. Int. 11. additional Fol. 42.]*

Has heard his Father John Ryley say, that he the said John purchased, from one Richard Leak 500 Acres, that lay upon Apoquinony Branches, in Newcastle County. And that he the said John settled his Son William Ryley upon it, under Maryland Rights. That the said William went away, from the Country, and left it, about 40 Years ago. That the Deponent, now claims the Land, by the Deaths of his Father and two Brothers. And that his Mother, and he this Deponent, paid Colonel Hynson, above 26 Years ago, when he was Sheriff of Kent County in Maryland, some Quit Rent for the said Land. And further that, in the Year 1726, he paid Mr. George Wilson, of Kent County aforesaid, 623 Pound of Tobacco, for Quit Rents of the said Land, for the Use of Edward Mitchell, who the Deponent heard had bought the Quit Rents, and threatened to distrain for them. This Witness swears himself interested, and what does he prove, if he were a good Witness? Why, that the Land was in Newcastle County, and the Maryland Tenant run away, and left it, 40 Years ago. But, as this Ryley's Tract was said to be once settled, the Defendant makes a great Bustle about it, and goes on and pursues his Evidence to this.

Colonel John Ward, of Maryland, the Defendant's Witness only, aged 67, [Lib. G. Fol. 31. Int. 11. additional Fol. 35.]

Has heard a Tract of Land, in the County of Newcastle, was possessed, upwards of 30 Years ago, by one Ryley, which was taken up and surveyed under a Maryland Right, and that the said Ryley settled his Son, under the same Right, upon the said Tract.

Hugh Terry, of Maryland, the Defendant's own Witness only, aged 41, [Lib. G. Fol. 39. Int. 11. additional Fol. 41.]

That one William Broxall, settled Thomas Cornwall about 23 Years ago, upon a Piece of Land, near Ryley's Run, in Newcastle County, and told the Deponent that he paid my Lord

his Rent, but what Lord did not particularly mention as aforesaid.

Hearsay as to the Payment of any Rent. Nor is it said under what, or whose Right he settled?

Geo. Veasey of Maryland, the Defendant's Witness, aged 61, [Lib. G. Fol. 82. Int. 21. Fol. 83.]

Has lived, for above 20 Years past, in Cecil County, and has heard of Bustles and Troubles, on Account of Encroachments made, by Inhabitants of both Provinces, but can give no particular or distinct Account of them.

And thus ends the whole Account of all my Lord's Settlements (as they are called) with respect to Newcastle County, and all the pretended Instances of our Encroachments upon him: which amount to this, that Ryley settled a Tract, for two Years, until he ran away and left it, 40 Years ago; and that another Man, one Divier, about 60 Years ago, planted some Peach Trees on Iron Hills.

We now go down to Kent and Sussex Counties, on the same Points; where we are to be very short.

**William Barnes, the Defendant's Witness only, aged 45. who was born in 1695, [Lib. G. Fol. 181. Int. 11. additional Fol. 186.]*

Has heard and believes that, about the Year 1674 or 1675, several Tracts of Land were taken up, in the three lower Counties, by Persons under Lord Baltimore, and, in particular, a Tract of Land called Mulberry Point, in Kent County aforesaid; and also a Neck of Land, called, as he believes, Slater Neck, in Sussex County. And also another Tract of Land, on Little Creek, in Kent County aforesaid. And he has also heard of some other Tracts of Land, in the three lower Counties, that were taken up, and possessed, under Maryland Rights, but cannot particularly name them. Knows not of any Quit Rents being paid for any Lands in the three lower Counties to Lord Baltimore, or his Ancestors, but has heard that Quit Rents have been paid for Lands in the three lower Counties to the Proprietor of Maryland, but believes the Person that told him, knew nothing of it, but by Hearsay. Says what knowledge he has, of the matters aforesaid was, he being at the House of R. Bennett, in Maryland, one Stevens shewed him a List, of near 20,000 Acres of Land, taken up under the Proprietors of Maryland, in the Counties of Kent and Sussex, amongst which, the Tracts before mentioned were named; and told him that the said Bennett had farmed the Arrearages of the Quit Rents of the said Lands, from the then Lord Baltimore, which was the Occasion of the making out of the said List, and that he the said Bennett was to collect and receive them but the People refused to pay.

Hearsay from a Marylander, who may be now alive, and this Hearsay Witness is an interested one too, and if it were evidence, tho' the Lands were taken up, as they call it, it is not pretended by this Witness, that one foot of them was ever settled, under Maryland Rights, in those Counties of Kent and Sussex.

Samuel Preston, of Philadelphia, our Witness, aged 75, but cross examined, [Lib. II. Fol. 104. Int. 7. additional Fol. 112.]

Knew one John Rhodes, who was a Justice of Peace in Sussex County, about 53 Years ago, [1687] but never knew any of the other Persons. The said Rhodes held Lands upon Rehoboth, in the said County of Sussex, the Affirmant believes, under the Plaintiffs Ancestors. Further says he has heard, of one Captain Henry Smith, that the said Smith, in the Time of the Dutch, and before Proprietor Penn had any Claim to the said three Counties, took up a Piece of Land under the Defendant's Ancestors, in a Neck called Prime Hook Neck, in Sussex County, [This Hearsay is contradicted by the written Evidence, for it was taken up under Governor Andros] but that, afterwards the same Lands were taken up, under Mr. Penn, by the said Smith or his Son, and under the said William Penn and his Family, and have been ever since held by the said Smith's Descendants.

29.

The Defendant wanted next to know, where, and in what Province, four or five particular Gentlemen lived, and who they held their Lands under, which, I suppose was intended to affect the South Bounds of Sussex County, Or, at least to shew that Settlements had been made in the lower Counties under Maryland.

John Teague, of Maryland, aged 85, our Witness, but cross-examined, [Lib. II. Fol. 43. Int. 7. additional Fol. 47.]

That he knew Colonel Francis Jenkins, Captain Henry Smith, John Rhodes and Miles Grey, upwards of 40 Years ago, but does not remember to have seen William Prentice. That Colonel Jenkins, Henry Smith, and Miles Grey lived in Somerset County in Maryland, and he believes held their Lands under the Defendant's Ancestors. But that John Rhodes lived in Sussex County, and has heard him, the said Rhodes, say, held his Lands under William Penn Esq:

NOTE, It appears in our written Evidence, That John Rhodes was appointed by Governor Andros to be an Ensign of the Company of Foot at the Whorekills on 26 October, 1676, and upon the 10th of November, 1677. was appointed one of the Justices of the Whorekill Court by Sir Edmund Andros, and

upon 8 October, 1678, was again appointed by Sir Edmund Andros one of the said Justices of Whorekill County, and upon 1st and 17th June, 1680, one of the Justices for the Whorekill Court, by Sir Edmund Andros, and, as such took the oath in Person before Governor Andros, and had a Dedimus to swear, and did swear, the other Justices; and that when Mr Penn came, soon afterwards, he was immediately appointed, by Mr. Penn one of the Justices for Whorekill District upon the 17th November, 1682, and again, one of the Justices, for that District, by its new name of Sussex County, upon 25th December, 1682. So that they'll scarce attempt to make John Roads a Maryland Tenant.

As to Henry Smith, he never took up his mentioned Lands under the Defendant's Ancestors at all. On the contrary, we have, in our written Evidence, the Grant made to him by Governor Andros, (between 1674 and 1677) of the 3000 Acres called Prime Hook, near Slaughters Creek by Prime Creek; besides which, we have Governor Andros's Commission to the said Henry Smith to be one of the Justices of the Whorekill Court, dated 10 November, 1677. And we also have the Order of 30th November, 1678, made by the Governor and Council at New York, fining him for slandering the rest of Magistrates there; and binding him to his good Behaviour. So that he was originally the Duke of York's Tenant and Servant at the Whorekills; whether he afterwards went down into Somerset County in Maryland, being angry at having been fined, we know not.

As to William Prentice, we have also the Grant which was made to him by Governor Andros (between 1674 and 1677) for 400 Acres in the Woods 5 Miles S. W. from the Whorekill Town; so that he also was the Duke of York's Tenant.

My Lord says in his Answer, fol. 188, 189, he, and his Ancestors, have been at very great Expence, from time to time, in improving and cultivating the three lower Counties, and the foregoing are the Proofs, by which he would support that gross Falsity.

And here end all the Proofs relating to any Settlement, ever made by him, or his Tenants, within any of the three lower Counties.

30.

It will be proper, therefore, in the next Place, to see, from his own Witnesses, what Number of Inhabitants, they themselves allow to be in the three lower Counties.

My Lord, in his Answer, believes, there may be 40,000; but) as usual) they have examined Witnesses to falsify his Answer, and to make the Number less than he admits.

* *William Barnes*, [*Lib. G. fol. 181. Int. 17. add. fol. 189.*]

Has lived in Kent County above 20 Years, and believes there are in the three lower Counties about 1500 or 1600 Housekeepers and Inhabitants, that pay Taxes, a tenth Part whereof he believes are Quakers.

John Holliday, [*Lib. G. fol. 170. Int. 17. add. fol. 178.*]

Has resided 20 Years in Kent County, and believes there is upwards of 1500 Housekeepers and Inhabitants, in Newcastle and Kent, that pay Taxes, and believes that about 300 of the 1500 are Quakers.

Cornelius Wiltbank, [*Lib. G. fol. 207. Int. 17. add. fol. 207.*]

Has lived in Sussex County ever since he was born. Believes there are about 4 or 500 Houskeepers and Inhabitants in Sussex County, that pay Taxes, and about 800 in Kent County, and in Newcastle County about 1200. Three hundred of which, or thereabouts, he believes, are Quakers.

George Ross, [*Lib. H. fol. 67. Int. 3 & 4. fol. 69.*]

Says, there are four Clergymen of the Church of England, settled in the three lower Counties, namely Mr. Pugh, Mr. Usher, Mr. Becket, and the Deponent; who are all Missionaries from the Society for the Propagation of the Gospel in Foreign Parts. He is not acquainted with the Number of Inhabitants in any of the three lower Counties, besides what are within his own District, which is but narrow, and in the Hundred of Newcastle; wherein, by computing four in a Family, he reckons there are about 800, including Men, Women and Children, whereof about 240 are of the Church of England, about 70 Quakers, and the rest Dissenters of different Denominations.

John Pugh, [*Lib. H. fol. 67. Int. 3 & 4. fol. 68.*]

Says, there are four Clergymen of the Church of England, settled in the three lower Counties, and that they are settled there by Authority from the Bishop of London, as Diocesan. He has been so ill a great while, he has not been able to take any Account of the Number of Inhabitants in his own Parish.

Arthur Usher, [*Lib. H. fol. 74. Int. 3 & 4. fol. 75.*]

He says, there are but 4 Clergymen of the Church of England settled in the three lower Counties: and as he has heard and believes, they are settled as Missionaries from the said Society. He does not know the Number of Inhabitants in the three lower Counties, or either of them. But has heard and believes there

are in Kent County about 840 Taxable Inhabitants, of which about 382 profess themselves to be of the Church of England, and 109 of them profess themselves Quakers: and the rest Christians, of different Denominations. Says, the Parish under his Care, is the said County of Kent, and he is annually obliged to make a Report of the Number of People in the said Parish, and their different Persuasions, to the said Society, and that, for that purpose, he had made the best Enquiry he could.

Daniel Rodney, aged 45, [Lib. G. fol. 190. Int. 17. add. fol. 191.]

Has lived in Kent County from his Infancy, and says, that having been, for some time, Clerk of that County, and having an opportunity of inspecting the Levy-List, believes there are about 800 housekeepers and Inhabitants that pay Taxes in Kent County. Of which he believes there are about 50, who are reputed to be Quakers.

William Becket, [Lib. H. fol. 57. Int. 3. fol. 57.]

He says there are four Church of England Clergymen, settled in the three Counties, by Order of the said Society. That this Year, in order to make a Report to the Bishop of London, of the Number of Persons within this Deponent's Parish, which is the County of Sussex, He went to the Clerk of the County, with one of his Church-Wardens, and consulted the Levy-List of the said County; and, computing the Number at five in a Family, they esteemed the whole to amount to about 1800 People. He believes that 5 in a Family were as many as there were, upon an Average. That, agreeable to the above Calculation, he believes there may be about 1100 of the said People, of the Church of England, and the rest of them Dissenters, but can't tell how many are Quakers; but that upon an Enquiry, about three Years ago, he found that there were about 17 Families of them, in the said County.

A most impertinent Inquiry, to gratify my Lord's Curiosity, but no way in Issue, what Religion or Persuasion any of the People are of.

31.

The Defendant examined eight more Witnesses, on his Part, about the Payment of Quit-Rents in the lower Counties, viz. The two first, as to the County of Newcastle; The two next, as to the County of Kent; and the four last, as to all the three Counties in general.

George Ross, of Newcastle County, the Defendant's Witness aged 59. [Lib. H. fol. 69. Int. 9. fol. 71.]

Has lived in Newcastle County about 30 Years. Has heard,

from many of the Inhabitants in the said County, that they had refused to pay Quit-Rents for the Lands they held therein, and declared that they would do so, unless they had Deeds to indemnify them from all Persons whatsoever: and particularly from one Joshua Story, who, having taken a Warrant to take up Lands from the Plaintiffs, afterwards declared, that he would never pay any Quit-Rents for the same, unless he could have a Patent, with a Clause of Indemnification against all other Persons. Says, that the said Persons, who so refused to pay their Quit-Rents, alledged for the Reason of their Refusal, that the Title to the said Lands was disputed between the Proprietors of Pensilvania and Maryland.

**Adam Short, of Newcastle County, the Defendant's Witness only, aged 78, [Lib. H. fol. 60. Int. 9. fol. 74.]*

He now lives, and for 49 Years past has lived, in Newcastle County. That formerly the Inhabitants of the said County generally paid their Quit-Rents to the Plaintiffs Ancestors, but, about thirty Years ago, many of them refused to do it, and the Deponent believes have not, since, paid any, to any Person whatsoever, because the People were told of the different Claims of the Crown, the Lord Baltimore and the Penns, and were at a loss to know their Landlord. Does not know that any Suit, or Distress, has ever been made, for any Rents, due to any Proprietor of the three Counties: but has heard that, above thirty Years ago, the Land of one Burrows at Apoquinimy, in Newcastle County, was seized, by a Collector of Rents for William Penn Esq; and sold for Discharge of the same.

Isaac Freeland, of Kent County, the Defendant's Witness only, aged 54, [Lib. H. fol. 65. Int. 9. fol. 66.]

Has lived in Kent County above 48 Years. That the Inhabitants of that County have, generally, refused to pay Quit-Rents for the Lands they hold, because they did not know whether the Lord Baltimore, or the Plaintiffs, were their Landlords. He never heard of any Distress being made, or Suit brought, for the Recovery of any Quit-Rents for the Land, in the said County.

John Holiday, of Kent County, the Defendant's Witness only, aged 45, [Lib. G. fol. 170. Int. 6. fol. 170.]

Has frequently heard, that several Persons, formerly, have paid Quit-Rents for Lands in the County of Kent, to the Proprietors of Pensilvania, but he has not known, or heard of, any Quit-Rent being demanded, or paid since the Lord Baltimore set up a Claim to the three Counties.

James Potter, of Kent County, the Defendant's Witness only, aged 64. [Lib. G. fol. 150. Int. 6. fol. 150.]

Says, that many Years ago, in the Life of the Plaintiffs Father,

Mr. Logan came to Dover, to demand Quit-Rents from the Inhabitants in the three lower Counties in question, for the Use of the Plaintiffs Father; and that, afterwards, one Clarke, an Agent, as he supposed, to the Proprietor of Pensilvania, came, demanded, and received of several, in the said County of Kent, some Quit-Rents. But, there being a Dispute between the Proprietors of Maryland and Pensilvania, concerning the Right to the said three lower Counties, the Generality of the People in the said Counties refused to pay any Quit-Rents, by Reason, as he understood and heard, they thought a Receipt for the Quit-Rent from one Proprietor would not discharge them against the other.

**Daniel Needham, of Kent County, the Defendant's Witness only, aged 57, [Lib. G. fol. 155. Int. 6. fol. 156.]*

Believes some of the Inhabitants of the three lower Counties have paid Quit-Rents for Lands in the lower Counties to the Pensilvania Proprietors, and some have refused to pay: the Reason of which Refusal, as he heard, was because the Right to the said Counties was contested. Some said it belonged to the King, some said to the Proprietor of Pensilvania, some to the Proprietor of Maryland. The Quit-Rent for the Land whereon this Affirmant now lives, in Kent County, was paid to the Proprietor of Pensilvania till the Year 1705, it being in the whole about 20 Years, but knows of no Quit-Rents that have been lately paid in the said three lower Counties.

Charles Hilliard, of Kent County, the Defendant's Witness only, aged 63, [Lib. G. fol. 158. Int. 6. fol. 165.]

Believes the Inhabitants in the three lower Counties have not, for some Years last past, paid any Quit-Rents for Lands to the Proprietors of Pensilvania; and the Reason why they don't pay any Quit-Rents is, because of a Dispute between the Proprietors of Pensilvania and Maryland, as he apprehends.

**William Barnes, of Kent County, the Defendant's Witness only, aged 45, [Lib. G. fol. 181. Int. 3. fol. 182.]*

Has heard that Quit-Rents, for Lands in the lower Counties, have been paid to the Proprietor of Pensilvania; but has not heard that any Quit-Rents have been paid or demanded since he lived in this County, which is above 20 Years; he has seen, and had in his Custody, a Receipt, for Quit-Rents, that was paid for the Use of the Proprietor of Pensilvania, for Land and Marsh, which he is now in Possession of in Kent County.

NOTE—The last 8 are all of them the Defendant's own Witnessess, and we did not examine any one of them at all, except Mr. Ross.

NOTE—The Articles of Agreement recite (as one of the Inducements thereto) that, notwithstanding several Treaties and Endeavours for settling the Disputes and Differences, divers Difficulties had risen, and many Persons had seated themselves, upon great Parcels of the Lands in dispute, without Authority from either of the Proprietors, and without paying the usual Fines or Quit-Rents, or conforming themselves to the Government and Establishment settled in any of the said Provinces or Counties; but, for the putting a final and friendly End and Accommodation to the said Disputes and Difference, It is agreed, &c.

32.

In the next Place, my Lord examined the Clerk of the Council here, to prove, that we had always appointed the Governour for the lower Counties, but that, upon the Crown's approving of such Governours, we signed a Declaration that it should not prejudice the Right claimed by the Crown.

William Sharpe, Esq., Clerk of the Council, [Lib. F. fol. 1. Int. 4. fol. 3.]

Is acquainted with the Method which hath been taken in appointing a Governour, or Deputy, or Lieutenant Governour for the three lower Counties, and hath been acquainted therewith, for about 30 Years last past, by means of having, during the said Time, belonged to the Privy Council Office, and is now one of the Clerks of the Privy Council. And saith that, to the best of this Deponent's Knowledge, Remembrance, and Belief, such Deputy or Lieutenant-Governour, hath, from time to time, during his Knowledge as aforesaid, been nominated by the Proprietor or Proprietors of the Province of Pensilvania at the same time when such Proprietor or Proprietors hath or have nominated to the Crown a Person to be Deputy or Lieutenant Governour of the said Province of Pensilvania. And saith that one and the same Person hath always, during this Deponent's said Knowledge, been so nominated as aforesaid Deputy or Lieutenant Governour for the said 3 lower Counties, and Deputy or Lieutenant Governour for the said Province of Pensilvania; and that such Nomination of Deputy or Lieutenant Governour, hath been, always, laid before the Crown, in Council, by way of Petition or Representation, by the said Proprietor or Proprietors, thereby humbly praying the Approbation of his or her Majesty for such person to be Deputy Lieutenant Governour. as aforesaid. And further saith that it hath

been usual for such Governour to be first approved of by the Crown, before he can take upon, or has any Jurisdiction over, the said three lower Counties; and that, in his Judgment and Belief, it is necessary for such Governour to be first approved of by the Crown, before he can take upon, or has any Jurisdiction over, the said three lower Counties; and the Reason of his Judgment and Belief is, for that such Proprietor or Proprietors, in his or their said Petition or Representation, doth, or do set forth, that such Person is nominated Deputy Lieutenant Governour, to his or her Majesty, in pursuance of an Act of Parliament in that behalf or to that Effect; And saith that, in the Order, of the Crown in Council, signifying the Royal Approbation of the Person nominated, to be Deputy or Lieutenant Governour of the said Province of Pensilvania, and the said 3 lower Counties, aforesaid, it hath always been signified, that the Crown approves of such Person to be Deputy or Lieutenant Governour of the said Province of Pensilvania, without any Limitation of Time, and to be Deputy or Lieutenant Governour of the said 3 lower Counties, during the Pleasure of the Crown, or to that Effect. And further, saith, that to the best of his Knowledge and Belief, it hath not been insisted upon, on Behalf of the Crown, or of any other Person or Persons, that the Governour should sign or subscribe a Declaration in Writing, signifying that such Appointment of a Governour, or Deputy, or Lieutenant Governour of the said 3 lower Counties should not in any manner be construed to establish any Right in the Proprietors of the said Province of Pensilvania to the said 3 lower Counties, or to any other Purport or Effect; Nor had the Governours or Deputy, or Lieutenant Governours of the said 3 lower Counties, at any time, to the best of his Knowledge and Belief, upon their being appointed to such Government, signed or subscribed any Declaration, to that Purport or Effect; But, saith that, to his Knowledge, it hath been insisted upon, by, or on the Behalf of the Crown, upon the Approbation of the Crown of such Deputy, or Lieutenant Governour, as aforesaid, that such Proprietor or Proprietors as aforesaid, should make a Declaration, in Writing, that the Approbation of the Crown, of such Deputy or Lieutenant Governour, of the said 3 lower Counties, should not be construed in any manner to diminish or set aside, the Right, claimed by the Crown, to the said 3 lower Counties, or to that Purport or Effect; And that, also, to the best of his Knowledge and Belief, unless such Declaration, in Writing, be made, by the Proprietor or Proprietors as aforesaid, such Deputy or Lieutenant Governour would not have been admitted to such Government; it having been, to his Knowledge, an usual Condition, in the Order of the Crown, approving of such

Governours, that the said Proprietor or Proprietors should make such Declaration as aforesaid, unless such Declaration had been made by such Proprietor or Proprietors before the approving of such Governours, which hath been done sometimes.

NOTE—The foregoing Deposition is precisely true, and is indeed the Sum and Substance of a Number of Orders of Council, made upon our Appointments of Governours, from time to time, since the Year 1702; at which time, when we applied for the Crown's Approbation, pursuant to the then new Act of Parliament the said Declaration was first required of us, and has, ever since that time been, on such occasions, renewed. But Mr. Penn, in Person, and his Deputies, before that time, and from the Year 1682, exercised the Government of the 3 lower Counties, for near 20 Years together, and had the Government of the same restored to him by the Crown also without any one such Declaration, till that new Act of Parliament was made, requiring Proprietors of all Plantations abroad, to have the Crown's Approbation of the Governours which they appointed: and that gave the first Opportunity of requiring that Declaration from us.

33.

The Defendant next enquired how many Ports and Harbours there were, in going up Delaware Bay?

Thomas Hynson Wright, of Maryland, aged 52, the Defendant's own Witness only, [Lib. G. fol. 251. Int. 18. add. fol. 258.]

Is but little acquainted with the Bay, or River of Delaware, and therefore can't take upon him to describe how many Ports or Harbours there are therein: having never been in any of them, but St. George's Creek on the West, and Salem Creek on the East.

John Price, a Pilot, aged 42, the Defendant's own Witness only, [Lib. G. fol. 199. Int. 18. addit. fol. 200.]

Is acquainted, and has been for 30 Years past, with the Bay and River of Delaware, by sailing up and down the same. Says there is, on the East side of the said Bay, Harbours fit for Trade and Shipping, viz. Morris's River and Cohansie Creek. And on the East side of Delaware River, Salem Creek, Timber Creek, and Ankokus Creek—And that there is on the West side of the said Bay, Prime-hook Bay, and, on the West side of the said River, St. George's Creek, Christiana Creek, Derby Creek, and Skuykill River.

These, I suppose, are to shew that there is no absolute Necessity that the Proprietors of Pensilvania should have

the lower Counties also, for the sake of Harbours in them; for that, truly, in coming up the Bay to Pensilvania, there are other Harbours, also. on the other side of the Bay, in New Jersey.

But he don't shew us where those Places are situated; and if he did, Does the Wind always favour to stand at West, to carry Ships in Times of Danger, into those Eastern Harbours? And if it did, must not Pensilvania Ships pay Port-Charges, if they go into another distinct Province? But this Witness, is a Pilot, and a very knowing one, and has proved a material Fact for us, which the Defendant is not aware of. You observe, he carefully distinguishes (on both Sides) which of the Harbours are in the Bay, and which are in the River of Delaware; and he says St. George's Creek is in the River; That proves then that the Bay is ended, at least, there; and that is, (upon a direct North Course) above 8 Miles South of Newcastle. Whereas, by the Articles, we convey to my Lord about 5 Miles above Newcastle, North of it. Consequently, at least, those 13 Miles above the furthest Part of the Land-mark mentioned in his own Charter.

34.

We had, abundantly, proved that, when Goods came, not out of Pensilvania, but meerly out of the lower Counties, Duties were demanded for them in Maryland, under Laws, past there which affected only Pensilvania, and its Territories thereunto belonging, and had consequently shewn that, in Maryland, and even by the Legislature of it, the lower Counties were considered as the Territories belonging to Pensilvania, (notwithstanding my Lord's absolute Denial of that Fact.) He, not contented, goes on to examine Witnesses, in order, if possible, to have contradicted that Fact; but it comes out, as usual.

John Scott, aged 34, our Witness, but cross-examined by the Defendant, [Lib. H. fol. 73. Int. 10. fol. 74.]

He himself has paid Duty for Rum imported, by Land, from Apoquinomy, to the Head of Bohemia River; but does not know where the Head of Chesopeak Bay is. That the Rum was never landed at Philadelphia, but brought directly from Antigua to Apoquinomy.

John Carnan, of Maryland, Merchant, our Witness, but cross-examined by the Defendant, [Lib. H. fol. 52. Int. 10. fol. 53.]

Has known Duty paid for Rum and Negros imported, by

Land, to the Head of Bohemia, and to Susquehanna River; but does not know the Head of Chesopeak Bay, or that any Rum or Negros have been thereto imported by Land.

35.

The next Step my Lord took, was to fish for some Counties, called Durham and Worcester Counties, scituate somewhere or other; but nobody knows any thing of any such Counties.

John Teague, of Maryland, aged 85, our Witness, but cross-examined, [Lib. H. fol. 43. Int. 9. addit. fol. 48.]

That he has heard of a County called Worcester County, but knows nothing about it.

36.

Well, there was another Fact my Lord wanted to prove, that, lately, one Cressap, had held a Fort, some where or other, under Lord Baltimore's Government, and to that end he cross-examined our two following Witnesses.

Samuel Hollingsworth, aged 67, [Lib. H. fol. 29. Int. 2. addit. fol. 33.]

Our Witness cross-examined, has heard of a Fort, on the West-side of Susquehannah, lately kept by one Cressap, under the Government of Maryland; and has heard, upwards of 40 Years ago, that, there formerly was an Indian Town and Fort, on the East-side of Susquehannah, near the Mouth of Octorara.

John Musgrave, another of our Witnesses, aged 73, cross-examined, [Lib. H. fol. 34. Int. 2. addit. fol. 39.]

Has heard of no other Fort, on the West-side of Susquehannah, than one, that was lately kept there, under the Government of Maryland, by one Captain Cressap.

NOTE—No Place mentioned, by either of these Hearsay Witnesses, for Cressap's late Fort; and the River Susquehannah runs down, North and South, Part of it in and through both Provinces.

37.

Now we come to the Defendant's Proof, in relation to the Agreement, and the Treaty in order thereto.

John Sharpe, [Lib. F. fol. 14. Int. 5. fol. 15.]

That this Deponent doth know of, and was privy to, a Treaty that was entered into, and carried on, by and between the Plaintiffs and Defendant for settling and determining the Bounds

between the Provinces of Maryland and Pensilvania, this Deponent being concerned for the said Defendant, as his Solicitor, in relation thereto; but saith that he doth not know, nor can he say, otherwise than as herein after is mentioned, when, or by whom, such Treaty was first proposed or set on foot; or upon whose Application, Solicitation, Instance or Request; this Deponent not being privy to the first Commencement of the said Treaty, and not being made acquainted therewith, or consulted therein, until after some Progress had been made therein; and that, when this Deponent came to be employed and concerned in the said Treaty, this Deponent apprehended and understood, that the said Treaty was first proposed, and set on foot, by the said Plaintiffs, and that the same originally proceeded from their Application, Solicitation, Instance and Request; And this Deponent believes the same to be true, for that, after this Deponent was concerned and employed therein, the said Plaintiffs Solicitor Mr. Paris, on their behalf, was much more pressing for the effecting and compleating the said Treaty, than the said Defendant the Lord Baltimore; but, in what manner, or with what View, or Design, such Treaty was so proposed, and set on foot, otherwise, than to fix and ascertain the Boundaries between the two Provinces of Maryland and Pensilvania, this Deponent, being of his own Knowledge a Stranger thereto, cannot set forth. And further saith, that this Deponent was present at two several Meetings, (and not more than two, to the best of his now Remembrance and Belief) which were had between the Defendant and the Plaintiffs, or some of them, upon the Subject-manner of the said Treaty, but the Times when, or Places where, this Deponent cannot set forth, other than to the best of this Deponent's now Remembrance and Belief they were had in July or August, 1731, at the Bedford-Head Tavern near Covent-Garden in the County of Middlesex. And saith that the Defendant, Mr. Ogle, the Plaintiffs John and Thomas Penn, Thomas Beake Esq; since deceased, the Plaintiffs Sollicitor, Mr. Paris, and this Deponent, were present at one, if not at both, of the said Meetings, but whether any other Persons, and if any, who else, were present thereat, this Deponent cannot recollect. And saith that the principal Discourse, which passed at such Meetings, was, in relation to bringing the said Treaty to a Conclusion, and agreeing upon the Heads thereof, and giving Instructions for carrying the same into Execution, by directing proper Deeds or Instruments to be prepared for that Purpose; And that, to the best of this Deponent's now Remembrance, and as he verily believes, there were two little Plans or Maps produced, upon that Occasion, at one of the said Meetings, the one of them by the Defendant, and the other of

them by one of the Plaintiffs, either the said John or Thomas Penn, but which particularly can't recollect; and which said two Plans or Maps, to the best of his present Remembrance and Belief, corresponded and agreed with each other. And saith that the Defendant the Lord Baltimore, upon the said Plan or Map so produced by him, and the said Plaintiff John or Thomas Penn, upon the said Plan or Map produced by one of them, did, to the best of this Deponent's now Remembrance and Belief, with a Pencil, draw Lines, which were so done, in order thereby to denote, as this Deponent understood and believes, in what manner the Boundary-Lines in Controversy between them ought to be run: but this Deponent, not putting down in Writing what passed at such Meetings, cannot set forth the Substance, Purport, or Effect of the several Proposals, Objections and Observations which were made use of, upon the Matters then under Consideration; nor by whom by Name the same were respectively so made: save that, in general, this Deponent very well remembers that the said Plaintiffs John and Thomas Penn seemed, as this Deponent apprehends, and is of Opinion, to have been much better prepared for such Meetings than the said Defendant, who seemed to have no other Information of the Matters, then under Consideration, than what arose from the said Plans or Maps, and the Information he received from the said John and Thomas Penn, and upon whose Representation of the Matters, then under Consideration, the Defendant, to the best of this Deponent's now Remembrance and Belief, seemed principally to rely; his Lordship being then, as this Deponent verily believes, of his own Knowledge, an entire Stranger to, and wholly unacquainted with, the Situation of the said Country; And which said Plan or Map (so produced by the said Defendant, and upon which, and the Information given him by the said Plaintiffs John and Thomas Penn, his Lordship seemed, in the Opinion and Judgment of this Deponent, entirely to rely) was, as this Deponent hath been since informed by the said Defendant and others, and therefore doth believe, drawn in Pensilvania, and sent from thence to Maryland, to the said Defendant the Lord Baltimore's Agents there, and by them transmitted to his said Lordship in England: And this Deponent hath been since informed by his Lordship and others, and therefore doth believe, that the said Plan or Map, so produced by the said Defendant, was very incorrect or erroneous. And this Deponent saith that, to the best of his Remembrance and Belief, either the said John or Thomas Penn declared, at such Meeting at which the said Plan or Maps were so produced, that the Plan he so produced, had been sent him from Pensilvania, by the Deputy Governor there, in order to

treat with the said Defendant the Lord Baltimore in Relation to the settling the said Boundary-Lines. And this Deponent saith that there was no other Map or Plan, to the best of his Remembrance and Belief, made use of, on such Treaty, than the aforementioned two Plans or Maps. And the Reason no other Map or Plan was then used, was, as this Deponent verily believes, from a firm Persuasion and Opinion, in the said Defendant the Lord Baltimore, that the same were just Plans, and that he might safely rely thereon. And this Deponent further said, that he is very sure, that nothing passed at the said Meetings, on either side, that was, in the least, over-bearing, but all seemed to be transacted in a very friendly manner, and that there were Concessions mutually made, on each side, to the best of this Deponent's now Remembrance and Belief; And this Deponent further saith that, to the best of his now Remembrance and Belief it was agreed, at the said Meeting where the said Plans or Maps were so produced as aforesaid, that the said Plan or Map, so produced by the Defendant the Lord Baltimore, should be the Plan or Map on which the Agreement then came to, should be founded; and that the same should be affixed, or annexed, to the Agreement, as a Means the better to explain the same; And this Deponent very well remembers that Mr. Senex, since dead, was pitched upon as a proper Person to be employed in engraving the said Plan or Map, and who was, as this Deponent believes, named by the said Defendant the Lord Baltimore, as one he had heard of, but not as one he was at all personally acquainted with; And this Deponent saith that, to the best of this Deponent's now Remembrance and Belief, the said Plaintiffs John and Thomas Penn immediately agreed to the said Mr. Senex being employed therein; And this Deponent doth not remember that any other Person, by Name, was proposed for that Purpose; And this Deponent further saith that the said Mr. Senex did, accordingly, as this Deponent apprehends and believes, engrave the said Plan or Map on the Parchment-Writing, on which the said Agreement was afterwards engrost; And that the Plan or Map, marked on the Backside thereof with the Letter (F) appearing to be printed or stampd upon the Parchment-Writing, markt with the Letter (G) and purporting to be Articles of Agreement between the said Defendant the Lord Baltimore and the Plaintiffs, now produced, does, as this Deponent apprehends and verily believes, exactly agree with the said Plan or Map so produced by the said Defendant the Lord Baltimore, and made use of at such Meeting as aforesaid; and that there is no Variation or Difference therein to the best of this Deponent's Knowledge and Belief, from that so produced as aforesaid by the said Defendant

the Lord Baltimore; and this Deponent saith that at such Meetings as aforesaid, or one of them, the said Defendant the Lord Baltimore did, to the best of this Deponent's now Remembrance and Belief, produce a Paper-Writing, purporting to contain Notes of Matters he the said Lord Baltimore proposed should be provided for, and inserted, in the Agreement which was then intended to be entred into; and which said Paper-Writing was all of the proper Hand-writing of the said Defendant the Lord Baltimore, as this Deponent verily believes. And this Deponent saith that such Paper-Writing did not purport to be compleat Notes of every thing, or to contain the Substance of all the several Matters proposed as Part of the said intended Agreement but only, to purport or contain short Notes or Heads concerning the Matters then under Consideration, and were made, as this Deponent apprehends and believes, only as Memorandums for the said Defendant the Lord Baltimore against the said Meetings, to remind himself thereof, and to prevent his forgetting the same; And this Deponent saith that it was not proposed, desired or insisted upon, by the said Defendant the Lord Baltimore, or on his behalf, at such Meetings, or either of them, that the said Agreement should be drawn on the Foot of those Notes only, but that all that was insisted upon by the said Defendant, the Lord Baltimore, or on his behalf, was, that the several Matters contained in the said Notes, should be provided for, and inserted in the said Agreement, and which the said Plaintiffs John and Thomas Penn agreed to; And further this Deponent saith, that the said Paper-Writing or Notes were read over, at, such Meetings or one of them, to the Company then present, by the said Defendant the Lord Baltimore; And that, to the best of this Deponent's present Remembrance and Belief, either the said Plaintiff John or Thomas Penn, or the said Mr. Paris, for or on the behalf of the Plaintiffs (but which of them in particular, this Deponent cannot recollect) did ask or desire the said Defendant the Lord Baltimore, to deliver to him the said Paper Writing or Notes, in order to insert them into the said Agreement; To which the said Defendant the Lord Baltimore answered, to the best of the Deponent's now Remembrance, and Belief, that he had no Copy of such Paper or Notes, but that he would deliver the same to this Deponent his Solicitor, in order to this Deponent's giving them a Copy thereof; and his Lordship did then, at such Meeting, deliver the same to this Deponent, with Directions to make and send, the Plaintiffs, or the said Mr. Paris, a Copy thereof, in order to insert the same in the said Agreement; And the said Defendant the Lord

Baltimore, did, very readily, and without any the least Difficulty, agree and consent thereto: And this Deponent further saith that, in some few Days afterwards (but the particular Day when, this Deponent cannot now recollect) he this Deponent did give, or send to, the said Mr. Paris, and for, or on the behalf of the said Plaintiffs, a Copy of the said Paper-Writing, or Notes, and which, as this Deponent verily believes, was a true and exact Copy thereof: And this Deponent saith that the Purport or Substance of the said Paper-Writing or Notes, so produced as aforesaid by the Defendant, is as followeth (that is to say) "1. There shall be a Circle of 12 M—Dist"—drawn from Newcastle. 2. The Proprietors of Pensilvania "shall be intituled to 15 Miles South of Philadelphia, by a West "Line drawn from the Point of the South and North to the "Extent of their West Limits, comprized in the Charter of "Pensilvania. 3. There shall be a Line South drawn from East "and West Line aforesaid, which shall intercut the Periphery "of the Circle of twelve Miles from Newcastle*, until it inter- "cut the Parrallel of an East and West Line drawn to the Pro- "montory or Cape called Cape Hinlopen at Rect-Angles. 4. The "Lord Baltimore to quit all Pretensions to the three Lower "Counties, known to be at present comprized within the Limits "aforesaid (that is to say) within the twelve Mile Circle of "Newcastle, and the North and South Line drawn as aforesaid "on the West, and the Bay of Delaware on the East. 5. The "Proprietors of Pensilvania to quit all Pretensions to any Land "to the Southward of the Line of 15 Miles from Philadelphia, "and to the West of the North and South Line heretofore "described, and for the Considerations aforesaid, convey to "the Lord Baltimore all Right and Title they may have there- "unto belonging. 6. For the quieting the present Possessors "of the Land in Dispute, and the better informing the respec- "tive Proprietors of the Provinces aforesaid, It is agreed by the "Parties contracting, that it shall and may be lawful for each "Proprietor to have Copies, at their respective Costs and "Charges, of the Grants, Patents, Leases, &c. by which any of "the present Claimants hold their Lands; and moreover it is "mutually agreed that fresh Patents, Leases, Grants, &c. "shall be made out, to all the Possessors of Lands, Houses, &c. "within the present disputed, and by this determined Boundary, "without any Fines or Arrearages of Rent, whatsoever, pro- "vided they become Tenants to the respective Provinces, subject "to the Rents and Reserves common to the Land-holders of the "respective Provinces, subject nevertheless to usual Fees to the "proper Officers of the said Provinces, for the taking out of any "Patents for the Lands and Tenements they at present are

"possest of". And to the Truth thereof this Deponent can the better depose, having the said Original Paper-Writing or Notes, in this Deponent's Custody or Possession, the same having been lately found, and this, with what will best and further appear in and by the said Paper-Writing or Notes, and the said produced Plan or Map, whereto this Deponent refers, is all he can materially depose to this Interrogatory, to his present Remembrance.

Mr. Sharpe expressly swears that he was not privy to the Commencement of the Treaty, and that he does not know at whose Request it began. (That last is a Fact which shall be cleared up by and by.) And it's observable that they would not examine Serjeant Wynne, who swears he, as my Lord's Council, was present, at my Lord's Request, at several Meetings in order to try to agree. Mr. Sharpe goes on, That he was only present at two Meetings, and those in July or August, 1731, after some Progress had been made in the said Treaty; That, at the said meeting, which he was present at, the principal Discourse which past was, in relation to the bringing the Treaty to a Conclusion, and agreeing upon the Heads thereof, and giving Instructions for carrying it into Execution, by directing proper Deeds or Instruments to be prepared.

He says, that he apprehended and understood that the Treaty began at the Plaintiffs Request, but that he does not know it; of which hereafter.

He says, that at those Meetings which he was at, the Plaintiffs seemed to be better prepared for such Meetings than my Lord was. Whose Fault was that, if it really was so? That my Lord, at those Meetings, seemed to have no other Information of the Matters, then under Consideration (and he has told us what they were) than what arose from his, and our Maps, and the Information he received from us, On which my Lord seemed principally to rely: Be it so, If he received his Map, from his own Agent, as, after 9 Months Consideration of the Draught he owned under his Hand and Seal, and still swears he did; and had had it many Years by him, as he, even now, swears positively he had had it; and if, over and above all this, his Map was exceedingly just and true, precisely in the very Part where he pretends 'twas grossly false; what other Information could he have had? Or, if further Information was still to have been had what hindred his getting it? Two Persons, Paris and Abraham Taylor, believe he sent the Substance of the Draft over to America, during the nine Months that the Draft itself was under his Consideration;

And the reason of their Belief thereof arises from what he himself declared at two several Times, viz. on 29th March, 1732, when he gave over that material new Clause about the intersecting of navigable Waters, and again on 10th May, 1732, when he executed the Articles; And they are strongly corroborated in this their Belief by the Defendant's Witness, who says, now, that those Articles if executed, would cut off navigable Waters. Was my Lord ignorant of that? No. His new Clause delivered on 29th March, 1732, provides expressly for that very Case, and for nothing in the World but that: So that my Lord, long before the Draft was settled, either knew the Situation of his Province, or had been informed from Maryland of it. And that Clause, as he then declared, his People insisted on, and therefore, he must have it; so that there is all the Proof, that we could give of his Actions, that he did (additional to all his other Information) send the Agreement, or Substance of it, over to his own Agents in Maryland, for further Information still, during the nine Months he had the Draft of it before him. And as to what seemed to Mr. Sharpe at those Meetings, it was an untrue Seeming or Appearance, for, besides all this, my Lord himself, and another Witness of ours, prove he really had other Information, long before; for they have examined a Witness, Mr. Preston, to prove that Mr. Logan had been, heretofore (in the Absence of the late Mr. Penn from Pensilvania, and afterwards, in the Infancy of the now Plaintiffs) the great Manager and Agent for 30 Years together from 1701 to 1732, in all the Pensilvania Affairs. He was so, and what does he swear? Why, that in the Year 1724, my Lord Baltimore had, before him, the fairest and largest Manuscript Draft of the Peninsula that he had ever seen, and that it had many different Lines drawn upon it East and West; And what does my Lord himself now swear, in his own Answer, about this Map? Why, that he took it, as the first that came to hand. The first! why then, from the 3d of June, 1731, to the 10th of May, 1732, he had Time enough to have lookt for the second, or some of his others.

So that, whatever seemed, my Lord really had other Information; nor does Mr Sharpe pretend that he had not, for, hitherto, he only says that, at those two particular Meetings in July or Augst 1731, my Lord seemed principally to rely; but what had he before, or after, down to 10th May 1732?

And besides, what signified it what he relied on, just then,

when they were ordering Deeds? The Agreement, and the Places where the Lines were to be run, had been before agreed, and they then met to direct the proper Deeds and Instruments. Not to settle what should be the Bounds. And my Lord had then brought a Sheet, all of his own Hand-writing, of particular Directions, from what Places, how far, and in what manner, every one of the lines should be run.

What Colour of Reason or Foundation, does Mr. Sharpe assign for his Belief that my Lord was then, as to his own Knowledge, an entire Stranger to, and wholly unacquainted with, the Situation of his Province, whereof he has been Proprietor ever since the Year 1715? None in the World. The Reason of the Thing is against him, a Province, out of which an immense Revenue, of near 8000*l*. Sterling per Annum is screwed, was worth his informing himself about; especially as it had for 50 Years before been in perpetual Contest, and as there had been two Applications about it, to which this present Lord Baltimore himself was a Party, viz. in 1717, and again in 1725, by the Earl of Sutherland; and this Lord himself had made one temporary Agreement, with Hannah Penn, before, about it, in 1723. And, whoever it was first set on foot the Treaty, yet, my Lord agreed to meet, and did meet, about a perpetual Agreement; And yet, contrary to the Reason of the Thing, Mr. Sharpe believes: But he believes contrary to the Evidence of the Thing also; for Mr. Logan swears, and my Lord, plainly enough, also swears, that my Lord, had other Maps long before; In which Case (let who will believe it) yet my Lord could not be an entire Stranger, or wholly unacquainted with the Situation of his own Province.

A Person may repeat a Gingle of Words till he loses himself, which is the Case here; Mr. Sharpe, at first, said my Lord seemed principally to rely on the two Maps and the Plaintiffs Information. And, upon a second Repetition of the Words, he makes them a little stronger, that my Lord seemed entirely to rely on them. But which could not be true, (that he did so entirely rely) however it might seem to Mr. Sharpe, as before observed.

Mr. Sharpe, very civilly and respectfully to his Client, says, he believes that Map was drawn in Pensilvania, sent from thence to my Lord's Agents in Maryland, and by them sent to my Lord; (so that he, himself, believes my Lord's Agents were the Persons that sent that Map to my Lord, which is something) and he adds further, his Belief, that the said Map was very incorrect and faulty; and he gives his Reason now, for all this

Belief; for, my Lord has told him so. I fancy, when he has read the Proofs, and seen how grossly my Lord's Answer upon Oath is falsified, in a great Number of Particulars, he will not be so civil as to believe what my Lord says, another Time.

Mr. Sharpe says (according to his Remembrance and Belief) there were Concessions mutually made on each Side; why so my Lord says in his Answer; but, tho' we most precisely interrogate him by our Bill, and particularly demand that he should instance what one Thing we insisted on, that he agreed to? Or what one single Thing which he insisted on, we did not agree to? We are so unfortunate, that neither from my Lord, nor his Solicitor, can we obtain the least Answer what those Concessions were? And Mr. Sharpe must forget, (he seems to have forgot, even whilst penning his Deposition) that the Meetings he was at were to give Orders for preparing the Deeds, so that the Bounds and Limits had been all agreed to and settled, before ever he was called into the Matter; and that was not the Time for making Concessions to each other, upon the Merits of the Agreement, when Mr. Sharpe came in to the Affair; and, if he does not mean Concessions in that Sense, he at best but trifles.

As to the rest of Mr. Sharpe's Deposition it confirms that of Paris, and particularly as to my Lord's own drawing of the Lines upon his own Map, his giving a Paper of Notes, &c.

There's one Observation more to be added; Mr. Sharpe says that Paris seemed more pressing to forward the Agreement than my Lord, and so says Paris also; and there were two Reasons for it. 1. My Lord himself, as it is plain, wanted Time, to hear from America. And 2. Paris, by Experience, would advise every one, who has any thing to do, in Concurrence with Mr. Sharpe, to do it all by themselves, if they desire it should be done speedily.

The Paper of my Lord's Notes, of his own Hand Writing, now (happily for us) brought to light again, does most grossly falsify my Lord's Answer. We had most particularly in our Bill charged that Paper, and, speaking of the extravagant Pretension of his Commissioners, that the Circle was only to be two Miles from Newcastle, we had charged that it appeared, by his own written Notes or Proposals, in two several Places of the same, that he himself, not only agreed, but proposed, under his own Hand, that the Circle should be twelve Miles distant from Newcastle, and, a second Time, 12 Miles from Newcastle. He has the unusual Daring, notwithstanding so precise a Charge, to deny, upon his oath, Fol. 362. that he ever meant or intended that the Circle should be such an one as that the Semi-Diameter should be twelve Miles. I never saw so gross a P—y; I must now call it by that flat Term.

And if Mankind are at Liberty to swear away thus their own Agreements, and their own Hand Writings, there is no such Thing as dealing with them.

John Sharpe, [Lib. F. Fol. 14. Int. 6. Fol. 45.]

Saith that he hath looked upon the said Parchment Writing, now also produced, marked with the Letter (G) and purporting to be Articles of Agreement, between the said Defendant and the Plaintiffs, and that this Deponent was concerned for the Defendant, as his Solicitor, in preparing and settling of the Draft of the said produced Parchment Writing or Articles of Agreement marked (G) ; but saith that he this Deponent was no otherwise concerned in forming and making the said Plan, or Map, printed or stamped on the same, than by once going to the said Mr. Senex, the Person who was agreed upon by all the Parties to engrave the same, to let him know that the said Lord Baltimore desired that he would prepare the same, as well on his the said Lord Baltimore's Behalf, as on Behalf of the Plaintiffs: and that, to the best of this Deponent's now Remembrance and Belief, this Deponent attended the said Mr. Senex, but once, in relation to the engraving the said Plan or Map; and that he the said Mr. Senex was, principally, attended thereon by the said Mr. Paris, the Plaintiffs Solicitor, on Behalf of the said Plaintiffs, as this Deponent believes

So that he was with Mr. Senex twice, at least; once, to desire him to prepare the Map. And, at least once, in relation to the engraving it.

He does not mention a Word about Mr. Senex's opinion, one way or other; tho' my Lord, in his own Answer, admits Mr. Senex did give his Opinion in Writing upon the Draft of the Articles.

Mr. Sharpe likewise omits to mention his own laying the Draft before Serjeant Wynne.

The same, [Int. 7. Fol. 48.]

That the first Draft of the said produced Articles marked with the Letter (G) was prepared on Behalf of the Plaintiffs, by the said Mr. Paris, their Solicitor, as this Deponent verily believes: the same having been delivered to this Deponent by the said Mr. Paris, as prepared by him; and this Deponent saith that there were several Alterations made, in the said Draft, after the same was so prepared by the said Mr. Paris as aforesaid, some of them by the Plaintiffs or their Agents, and others by the Defendant or his Agents; [in the plural Number] but this Deponent saith that the Clause, in the said produced Articles, relating to the making the said Agreement void, if, for want of a sufficient Quorum of the Commissioners not attending from time to time, the Lines, thereby directed,

were not run, within the Time thereby limited, and, for the Parties, whose Commissioners made such Default, forfeiting 5000*l*, was one of the said Alterations, and was, to the best of this Deponent's now Remembrance and Belief, proposed by the said Mr. Paris, on the Plaintiffs Behalf, and agreed to by the Defendant, as what appeared to be for the mutual Benefit and Advantage of both Parties: and saith that, to the best of this Deponent's now Remembrance and Belief, there was not any Objection made, on either Side, to the said Alteration or any material Objection to any other of the Alterations, that were proposed by either Side, to be made to the said Draft; all the Alterations which were so made, being considered, by each Side, to the best of this Deponent's now Remembrance and Belief, reasonable and necessary.

Here ends Mr. Sharpe's whole Account of the Treaty, and the Articles of Agreement.

But he is succeeded by a Gentleman who really knows less, but speaks more, by a great deal, than Mr. Sharpe.

Samuel Ogle, [Lib. G. Fol. 218. 1st original Int. Fol. 218.]

That he has been well acquainted with the Defendant in this Cause upwards of 20 Years, and saith that he hath seen the Plaintiffs in this Cause once, but is not well acquainted with them.

He is sworn to speak the whole Truth, so I suppose he saw the Plaintiffs but once, and we shall see how much he knows their Hearts, at first Sight of their Faces.

The same, [Int. 13. Fol. 219.]

That the Defendant, the Lord Baltimore, about the Year 1730, frequently mentioned to this Deponent, that his Governor of Maryland had many Complaints to him, of Encroachments being made on the Province of Maryland, by the People of Pensilvania, countenanced by the Governor of Pensilvania, that the Defendant was resolved to take some legal Course with the Proprietors of Pensilvania to put a stop to the said Encroachments, since they **would** not do any thing by fair means; (*1.) and, some time after, this Deponent went to Ireland, and staid there some time, and after his Return from Ireland, and in the Year 1731, enquired of the Defendant concerning his Suit, relating to the said Affair? Whereupon, the Defendant, then, informed him, that the Proprietors of Pensilvania had applied to settle the Disputes aforesaid amicably, by a Treaty; and that, in the Year 1731, this Deponent casually meeting the Defendant, he acquainted this Deponent that he was, that Evening, to meet the Proprietors of Pensilvania, at the Bedford Head Tavern, near Covent Garden in London; and the said Defendant then desired this Deponent to be with him, at the said Meeting: and

saith that he was present, at the said Meeting, and that the Plaintiffs and the Defendant were also all then present; and that, at the said Meeting, it appeared to this Deponent, that the Defendant was very ignorant of the Subject Matter in Dispute; and that the Plaintiffs took great Pains to persuade the defendant that they were equally ignorant and that, on the defendant's shewing his Ignorance, in relation to a Map or Plan of Maryland and Pensilvania which lay on the Table, one of the Plaintiffs said, my Lord, we are all ignorant alike, (*2.) And what we do is a good deal in the dark, but it may be as well for one Party as the other, and what we are doing is for the sake of Peace, (*3) or Words to that Effect; And this deponent further remembers that, at the aforesaid Meeting, the Plaintiffs insinuated to the defendant, that they, the Plaintiffs, were sensible, what they were doing, would be contrary to the Opinion of their, the Plaintiffs, Friends in Pensilvania, and Particularly to Mr. Logan, and that, they were told, some of the richest and best peopled Lands in Pensilvania would, by the Treaty they were then upon, fall to the Defendant; (*4.) All which he, the more particularly remembers, because, it made a great impression upon him at the time, and caused him then to think that the Plaintiffs were great Masters of the Art of Dissimulation (*5.) And, when he came to America, and found how disadvantageous a Bargain the defendant had afterwards made, and the great Rejoicings in Pensilvania, (*6) upon the Account of the Agreement entered into between the Plaintiffs and the Defendant, this Deponent often reflected on what passed at the Meeting aforesaid, and recollected the several passages of the Dissimulation of the Proprietors of Pensilvania, in the Transaction aforesaid. And what made this Deponent further reflect upon what passed at the Meeting aforesaid was, upon reading the Copy of the Bill exhibited in this Cause, he found it therein insinuated, as if the Defendant was assisted by this Deponent his Governor in the making of the Articles in the Bill aforesaid, which really is untrue; for that this Deponent neither did, nor could, give any Assistance to the Defendant in the Affair, because he then was really unacquainted with the Nature of the Dispute, and was not present at any other Meeting, than that before mentioned, as he can recollect; and further saith, that he cannot recollect any other Substance of the Proposals, Objections or Observations, which were made use of at the Meeting aforesaid, than what he has before deposed and declared.

The same to the last Gen. Int. Fol. 244.]

That he knows (*7) the Defendant, at the time he entered into the Agreement mentioned in this Cause, was wholly un-

acquainted, and ignorant, of the Boundaries of the Provinces of Maryland and Pensilvania, and every thing (*8) relating thereto, and was very ill informed thereof (*9) from Maryland.

1. This Person, whatever he is for a Governor, is yet a very bad Witness for my Lord; for he knows abundantly too much for any mortal Creature to be capable of knowing. But the Heat of his Zeal hath transported him beyond his Discretion, and he has, unwittingly, added to our Proof, that the Treaty was began at the Request of my Lord. We charge by our Bill that it was so. My Lord utterly denies it, and says we solicited him to it. Nay, he is profuse in the Use of his Words, we frequently, repeatedly, and earnestly made Applications to him; but how? Where? When? By what means? Did we apply by any Friend to him, who was the Person employed? Did we write any Letter to him, where is the Letter? my Lord begs to be excused from telling any one Particular, or proving any one Particular, of our frequent, repeated, and earnest Applications to him. (Just in the same manner as about the Concessions; which he tells us also, in general Terms, that he made to us.) He says we desired the Treaty. But Paris proves that my Lord began it, and he gives the Particulars of it, and withall a very strong Circumstance for his remembering it, as he considered that that Agreement with my Lord, might contribute to another Agreement, he had been long laboring to bring about, for his then Client William Penn, the Heir at Law. But this is, yet, only one Witness against my Lord's Answer. But now, how strongly does Mr. Ogle confirm it? He swears, my Lord told him, that we would not do any thing by fair means, and therefore, my Lord was resolved that he would take a legal Course, and so, I suppose he did, for, afterwards, Ogle enquired of him, what was become of his suit? Now, my Lord could not say we would do nothing by fair means, unless he had tried fair means. And that is the very Account, which Paris gives; That my Lord first desired the Treaty; That, at the two first Meetings, the Plaintiffs thought his demands too high, and would not agree to them; That the Treaty broke off thereupon, and my Lord immediately, on 1 July 1731, presented a Petition to the King. So here are, now, two Witnesses that my Lord began the Treaty. Nor will the Matters rest here, (Paris being a little more cautious of what he swears to, than the Defendant seems to be) my Lord in his Answer can't remember the particular Days he met, but admits several Meetings were had between the 11th June, 1731, and 10th May, 1732. Let us next see the Petition which my Lord presented to the King, on the first of July, (when, as Paris says, the Treaty was broke off) and that Petition, being a written Paper, will not lie for either Side.

Why his Petition sets out the Charter of Maryland to his Ancestor, and the Charter of Pensilvania to Mr. Penn; That several Disputes had arisen, about the Northern Bounds of Maryland, and that frequent Application had been made to the Crown, to ascertain the same, in the Years 1685, 1708, and in 1720, and divers Letters and Orders had been sent from the Crown, for that purpose, but they had hitherto, had no Effect; That, by Reasons of those Disputes, very great Numbers of his own Tenants refused to pay any Rents, or submit themselves to his Government, which occasioned frequent Disputes; and now, upon this Case, which he made, what was his Prayer? Why, that the King would order the Pensilvania Proprietors, to join with him, in settling the said Boundaries; and, if they refused to comply therewith, or that the same should not be settled within a Twelve month from that time, that then, the King would hear the Matter in dispute, and make such Determination as to him should seem meet.

I think it is impossible to give a stronger Proof than this, that it was my Lord that wanted and desired the Agreement, for those very strong Reasons which he gives in his Petition, and could not then get us into his Terms, and therefore petitioned the King, to order us to agree, in order to terrify the Plaintiffs, by the Expence of a new Application in Council, into an Agreement, he so much wanted; and, of which his new petition (as Paris says) he immediately sent Mr. Penns a Letter, that he had made such an Application, which answered his Design and brought round the Meetings again.

But, even this is not all our Proof; for what says Serjeant Wynne, my Lord's standing Council for his Maryland Affairs? Why he says this; That he was requested, by the Defendant, to meet the Plaintiffs, or their Agents, to try if they could come to any amicable Agreement, touching the Boundaries in Dispute, That he was, accordingly, present at several Meetings, and the Parties did, at length, come to some Agreement; He says that this was requested of him, by the said Defendant, as near as he remembers, about May, 1731 or 1732. And it must be May, 1731, for my Lord himself owns the Draft of the Agreement was prepared, and delivered over, 9 Months before May, 1732, namely, in August, 1731.

So that, here is a pretty good Outset. Three Witnesses, of which my Lord's own Council (whom he did not dare to examine) and his Governor, are two, and my Lord Baltimore's own written Petition to the King, to falsify the first Fact in his Answer, which relates to the Agreement, and to prove that the Treaty really was begun at his own Request.

And, if this is so, there are a Number of trifling Incidents

that fall along with this Fact; for if he would desire. and at last oblige us, (by a new Application in Council the Expence whereof we had declared a Dread of) to come into an Agreement, shall he now say, he had not lookt into all his Maps, or he did not know his Right?

2. Mr. Ogle makes the Plaintiffs to have said, that they were as ignorant as my Lord. They have proved that they must be so; for it is in Evidence that they were never in America before the Agreement, and they could only have Maps from their Agents, as (now it's proved) my Lord had from his.

3. He also makes the Plaintiffs to have said, that what they were agreeing to, was for the sake of Peace. And if you please to recollect what a very large District we have granted to my Lord, beyond the most extravagant of any his former Pretensions, it must plainly appear that it was for the Love of Peace, or through Inability for War (and indeed both those were their Reasons) that they should make an Agreement, so very disadvantageous to themselves.

4. He makes the Plaintiffs to have said, that they had been told, that some of the richest and best peopled Lands in Pensilvania would, by that Agreement, fall to my Lord. They certainly were told so, and did say they were told so; And has any Mortal contradicted them; I am sure I see not a syllable to the contrary. And heartily wish my Lord would have mentioned that Fact in his Answer, and so have put it in Issue; In which Case, we should have, most abundantly, proved that our Town of Nottingham (the most valuable Spot in our whole Province, (which Mr. Logan mentions to have been so cautious in granting out) is, by this Agreement, through the Misinformation of our Surveyor who laid out that Tract, really fallen on my Lord's Side of the Line, into his Manors of New Munster and Talbot, as we now find to our Sorrow, upon running the Line for temporary Jurisdiction which was ordered by the King in Council, pending this Suit.

5. Mr. Ogle, it seems, then, at first sight, thought the Plaintiffs great Masters of the Art of Dissimulation. But why so? He swears he could not help my Lord in the making of the Articles (which, by the way, he was never charged with; that being a wilful Mistake of his) for that he himself then was really unacquainted with the Nature of the Dispute (those are his Words); How then could he tell how much, or how little, the Plaintiffs knew; whether they said true, or dissembled; whether they did know a great deal, or were, as they pretended to be, really ignorant, of Matters, relating to a Dispute, which this Man swears he himself, did not so much as understand the Nature of?

6. He does not expressly say, that there were Rejoicings in Pensilvania at the Agreement (nor no Mortal ever heard of any such thing) but, when he found the great Rejoicings in Pensilvania, why then he reflected so and so.

7. We come now to remark on three Facts, not believed or apprehended by this Governor Ogle but sworn to, absolutely and positively, in the strongest manner that Words can express: He knows the Defendant (and when too? why at the Time of entering into the Agreement, which was almost a Year after the Treaty) was wholly unacquainted and ignorant of the Boundaries of the Provinzes of Maryland and Pensilvania, and of every thing relating thereto, and was very ill informed thereof from Maryland. If this were true, he makes his Principal an Idiot and a Natural; but this rash Governor, out of his Over-Zeal for his Principal, and to curry Favour with him to continue in his Government of 1500*l.* per Annum, has sworn positively what no Human Creature can know, or can possibly swear, with an honest Conscience. And it happens, unfortunately for Governor Ogle, that he has sworn, what he had not so much as a Chance to have it happen to be true, but what is absolutely false, and proved so most notoriously. For, to take one or two strong Instances only, (and the first of which came manifestly from Maryland too) my Lord owns he delivered over his new Clause, about the Line which run up the Peninsula South and North's intersecting of Navigable Waters; did he, by Chance, or Accident, draw that new Clause, of his own Hand, or was it thro' some Acquaintance and Knowledge, of the Boundaries, which was one thing relating to the Boundary? But here is a stronger Instance, and an earlier Instance than that, that he most certainly did know some thing relating to his Boundaries; for here are his own written Proposals and Descriptions under his own Hand, containing a whole Sheet of Written Directions, where, and from whence, and to what Parts, and how, all and every one of the Bound Lines should run, which are absolutely impossible to have been drawn up by a Person wholly unacquainted and ignorant of every thing relating to the Boundaries, which, yet, this most rash Witness swears positively that my Lord was; so that one must be very precise with this Witness, and his Master too, who can thus swear away what is under their own Hand Writings.

**William Barnes, the Defendant's Witness only, [Lib. G. fol. 181. Int. 14. fol. 183.]*

That he is acquainted with several of the Places named in the printed Plan, but knows nothing of the Situation of Cape Henlopen; saith he hath reason to believe the Plaintiffs were privy to some Mistake in the Map or Plan, on which the Arti-

cles in Question in this Cause were founded, before the Execution of the said Articles; and the Reason of such his Belief was, that he being, with some of his Neighbours, (viz. John Holiday and James Morris) in Company with Messrs. John and Thomas Penn, two of the Plaintiffs, at Philadelphia, some time after the arrival of the said John Penn, a Conversation arose, concerning the Articles of Agreement aforesaid, in which Conversation this Deponent acquainted the said Plaintiffs, that he had heard, in Maryland, that the Lord Baltimore was imposed upon, by some Mistakes or Errors in the said Plan; whereupon the said John Penn replied, he did not know, but it might be an unjust Plan, but if it was, it was a Plan of his the Lord Baltimore's own chusing; that they, the Plaintiffs, offered him a Plan, which they believed to be just, and which he had under his Consideration, some time, but the Lord Baltimore refused to take the Plan the Plaintiffs offered him, and took one, which he supposed, was procured by the Lord Baltimore's Friends.

This Witness has proved his holding Lands under the Plaintiffs in the Lower Counties; and proves nothing, from this, which fell, many Years after, in private Conversation, from Mr. Penn, but that Mr. Penn said he did not know but my Lord's Plan might be unjust. Nor he certainly, did not, but was really as ignorant, as he pretended, and could not possibly know any thing of the matter, having never been in America, to gain any Knowledge, unless his Birth, and staying there to a Year and half old, could have given it.

But even this poor Account is very much varied and softened by the next Witness my Lord examined, who was present at the same Discourse with Mr. Penn, and relates it in a fairer manner.

John Holliday, the Defendant's Witnesses only, [Lib. G fol. 170. 9th add. Int. fol. 176.]

That he hath heard John Penn one of the Plaintiffs, say, that, after the Draft of the Original Agreement made between the Parties in this Cause was drawn, the Defendant, the Lord Baltimore, had the said Draft a long time, for his Perusal; and he this Affirmant was present, when one William Barnes mentioned to the said John and Thomas Penn, that, it was suggested, there was some Mistake, in the Plan or Map to the said Articles; to which the said John Penn then said, if there was a Mistake, it was taken from a Plan or Map done by the Lord Baltimore's own People of Maryland; and does not remember to have heard the said John Penn say any thing more of the Truth, or Falsity, of the said Map or Plan.

38.

Now we come to the Defendant's Proofs of what passed during the Time the Commissioners met in order to have executed the Articles.

Samuel Ogle, the Defendant's Governor. [*Lib. G. fol. 218. Int. 15. fol. 231.*]

That he was one of the Commissioners appointed on the behalf of the Defendant, to settle the Boundaries between the Province of Maryland, and Province of Pensilvania, pursuant to the Agreement in question, and that the Persons appointed Commissioners with this Deponent, on the Defendant's behalf, on that occasion, were Charles Calvert, Philemon Lloyd, Benjamin Tasker, Matthew Tilghman Ward, Richard Bennet, and Michael Howard. Saith that he is no way interested in the Event of this Cause, nor shall be any ways prejudiced, or benefited, by the Determination thereof; that this Deponent, or any other of the Commissioners aforesaid, to his Belief or Knowledge, (before the Doubt arose amongst the Commissioners concerning the Centre and Dimensions of the Circle to be run) never did advise, persuade, intreat, desire, or by any means endeavour, to prevail upon the Defendant to fly from, or endeavour to avoid, the Agreement in Question in this Cause; nor make any Proposals, Declaration or Promise, by word of Mouth, or in writing, or otherwise to the Defendant, in order to influence or induce him, to evade the said Agreement; and that this Deponent believes he often mentioned to the said Defendant the Disadvantages arising to him, by the said Agreement; but, whether, before the Doubts arose about the Centre and Circle, he is not certain. That he never had, nor does not know of any Conference that the other Commissioners ever had, with the Defendant, (before such Difference in Opinion arose amongst them and the other Commissioners) in order to contrive or consider how to evade the said Agreement, or for any such like purpose. That he did not propose, or receive, any Advantage, to himself, or knows of any Advantage, that any of the other Commissioners proposed, or received, to themselves, by the Agreement not being carried into execution. Saith that he had a Warrant for about 5000 Acres of Land, within the said Province of Maryland, during the time of the Commission for carrying the said Agreement into Execution was in force, which had not been taken up; but knows not that any other of the Commissioners had Warrants to take up any Land. And this Deponent apprehends that the carrying the said Agreement into Execution would have been an Advantage to this Deponent, in laying out of the Land in the Warrant mentioned: because, by that means, the Land,

upon the Line, would have become more valuable, and the Warrant might have been disposed of to greater Advantage; whereas, because the Lines were not run, no body cared to meddle with the Lands in dispute, but they were chiefly inhabited by loose idle Persons, who paid neither Rent or Taxes, to either Government, and that the Disagreement of the Commissioners about the Sense of the Articles in question, was the Occasion of their not being carried into Execution, as this Deponent apprehends.

*Benjamin Tasker, the Defendant's Witness, [Lib. G. fol. 290.
Int. 15. fol. 293.]*

Saith he was one of the Commissioners appointed on the behalf of the Detendant for settling the Boundaries between the Provinces of Maryland and Pensilvania, pursuant to an Agreeement between the Plaintiffs and Defendant, and that his Excellency Samuel Ogle Esq; Charles Calvert, Philemon Lloyd, Michael Howard, Richard Bennet and Matthew Tilghman Ward Esqrs; were joint Commissioners with this Deponent on that Occasion; and that he is no manner interested in the Event of this Cause; that neither he, or any other of the said joint Commissioners with him, or any other Person, to his Knowledge, at any Time (before the Doubt arose among the said Commissioners at their Meetings, concerning the Center and Dimensions of the Circle to be run, in pursuance of the Agreement aforesaid) did advise or perswade, or by any other means, endeavour to prevail upon the Defendant, to endeavour to avoid the Agreement, in question, in this Cause, or make any Proposal, Declaration, by Word of Mouth or in Writing, to the Defendant, in order to influence or induce him to evade the same, or represent any Advantage, or Disadvantage, that would arise therefrom to the Defendant: that he neither proposed or to himself, and does not know that any other of the Joint-Commissioners appointed with this Deponent aforesaid did propose or receive, any Advantage, to themselves, by the Agreement's not being carried into Execution. That he had no Warrant for taking up Lands within the Province of Maryland aforesaid during the Time the Commission aforesaid was in Force, but hath heard, that the present Governor of Maryland, and Charles Calvert aforesaid, each had Warrants for about 5000 Acres of Land; which he has likewise heard were located, during the Commission aforesaid, very far to the Southward of the Disputed Bounds, upon Lands of very little Value. That he knows of no other Cause, that obstructed the carrying the Agreement aforesaid into Execution, but the Disagreement of the Commissioners upon the Construction of the Circle aforesaid.

John Ross, the Defendant's Witness only, [Lib. G. fol. 303. Int. 15. fol. 308.]

That he was one of the Commissioners appointed by the Governor of Maryland on the behalf of the Defendant, in the Room of Charles Calvert Esq., deceased, for executing the Articles in question in this Cause, and that his Excellency Samuel Ogle, Matthew Tilghman Ward, Benjamin Tasker, Michael Howard, Edmund Jennings and James Harris Esqrs; were Joint Commissioners on that Occasion, with this Deponent, and saith that he is no manner interested in the Event of this Cause, and that he this Deponent never did, nor does he know that any other Person did, advise or perswade the Defendant to endeavour to avoid the Execution of the Agreement aforesaid, nor does he know of any Meeting had, by any of the Commissioners, with the Defendant, for that purpose; and that he neither proposed, or received, any Advantage to himself, nor does he know that any other of the Joint Commissioners with this Deponent proposed, or received, any Advantage to themselves, by the said Articles of Agreement's not being carried into Execution; saith that he had no Warrant to take up Lands in the Province aforesaid, during the Time the Commission aforesaid was in Force, but his Excellency the Governor aforesaid had, to the best of his Remembrance, during that Time, a Warrant to take up about 5000 Acres of Land, in the Province aforesaid, and that the same was, as this Deponent has heard, located in Ann Arundel County, about 18 Miles from Annapolis aforesaid, and that the carrying the said Agreement into Execution, would have been no Disadvantage to the Effect of the said Warrant; and that he believes the Difference in Judgment among the Commissioners on the behalf of the Plaintiffs and the Defendant, about running the Circle round Newcastle, prevented the carrying the Articles in Question into Execution.

The Defendant had, in all, ten Commissioners, of which he chose to examine only two of those seven who were originally appointed, and Ross for a third, who was only appointed at the latter End of the Affair, and met on 3d September, 1733, for the first Time.

All of them swear, on my Lord's own Examination of them again, that the reason, why the Articles were not carried into Execution, was, the Difference in Opinion between the Commissioners.

So that the Pretence of waiting an Hour, on 3d February 1732, for our Commissioners, is out of the Case.

It's very observable that Governor Ogle swears he has read the present Bill.

In that Bill we had charged, generally, that my Lord and

his Commissioners did contrive to avoid executing the Articles.

And surely, Hugh Jones's own Account, of my Lord himself ordering him to post up, on the Borders, and to send to his Friends, in the Lower Counties, the printed Advertisement of 21 March 1732, pending my Lord's own renewed Appointment of the 15th of February for the Commissioners to meet at Joppa on the 7th of May then following, amounts to Demonstration.

Well, but Mr. Ogle affects to answer the Charges in the Bill: wherefore, only himself and Tasker, two of the seven original Commissioners, are to be examined: with the Addition of Mr. Ross, who came in, as aforesaid, quite at the End of the Affair.

But what a Contrast there is, between those two old Commissioners who were in the Secret, and Mr. Ross, who came in late, and was not in the Secret?

Mr. Ross denies generally, and honestly, that he knows of any such Contrivance at all.

But what say Ogle and Tasker? Why they most absolutely, deny, at first, any such Contrivance used before the Difference arose between the Commissioners about the Center and the Dimensions of the Circle. Why that happened in October, 1732. So that here is a Negative pregnant.

But it does not rest here, for, in the same Breath, Mr. Ogle owns, he did often mention, to the Defendant, the Disadvantages arising to him from the Agreement, but whether he did so, before those Doubts arose about the Center and Circle, he is not certain.

Again, he denies, in the self same manner, any Conference with the Defendant, in order to consider how to evade the Agreement, at any Time before the said Doubts arose. Why it was impossible he should have any before; for the Doubts arose in October, and my Lord swears he did not arrive there till 14 November. But is this an answering of the general Charge in our Bill?

Well, we had again charged that my Lord's Commissioners, whom he appointed to execute the Articles, were possessed of Warrants, at large, for great Quantities of Land. My Lord denies that he knows, believes or ever heard, of any such a Matter.

Yet, with this short Examinations, it comes out, affirmatively, that Ogle and Calvert, two of his Commissioners, had, each of them, Warrants for 5000 Acres, or more, during the Commission. And I suppose that's the Reason they examined no more of their Commissioners.

I observe Mr. Ogle (who must best know) does not pretend that his Warrant is located; but the two others are made to say, that they have heard (not that they believe it) that Mr. Ogle's Warrant is located.

Mr. Ogle apprehends (which is not a legal Word for a Witness upon Oath) it would have been an Advantage to him, to have had the Articles executed; for then the Lands, just upon the Line, might have been more valuable; but nobody else can apprehend so, even if such Lands had been vacant, which they are not; for their own Witnesses tell us they are surveyed already, into large Manors, New Munster, and Talbot Manors, which extend part of them above the Line. And surely, the larger Field a Man has to chuse out of, the better Land he may help himself to, especially, in the case of this Governor, who, so gravely contended, that wherever a Maryland Warrant is located, the Place *ipso facto* becomes a Part of Maryland.

Mr. Ross, in endeavouring to add to, takes off from, the little force there was before; for he says that he has heard that executing the Agreement would have been no disadvantage to the Effect of the Warrant; why, no to be sure; the Effect of the Warrant was, to grant him 5000 Acres at large. And that Effect is equally answered, by laying them out in one Place, or in another. So that, it is plain, these People are quibbling, and disguising the Truth, instead of speaking out fairly and openly.

39.

Hugh Jones, of Maryland, Clerk, the Defendant's Witness, [Lib. G. fol. 4. Int. 8. fol. 13.]

Says the Paper Exhibit No 2. is a Copy of a Question and Answer, [about the Circle] and that his Name and Mr. Rumsey's, subscribed to the Original of the same, were of their Handwritings; and says that he and Rumsey were appointed, on Friday 2d February, 1732, to attend the Governor of Maryland and the other Maryland Commissioners; and the said Governor of Maryland, the same Day, acquainted the Deponent there had been Disputes between the Commissioners, on each side, concerning the Terms mentioned in that Question, and that they had agreed to take the Opinion of Surveyors on each part. And, then, he proposed the said Question, to be answered by the Deponent and Rumsey, which they did, in the manner mentioned in the Exhibit. The Original of which Exhibit was, the next Morning, delivered to the Governor of Maryland. And the next Day, being Sunday, the Deponent was obliged, and ac-

cordingly left the Commissioners on Saturday, to attend his Cure in Maryland.

William Rumsey, of Maryland, the Defendant's Witness, [Lib. G. fol. 129. Int. 8. fol. 134.]

Also proves that this is a Copy of the Question put to, and the Answer signed and given by Mr. Jones and himself, and delivered to the Governor of Maryland on 3d February. And says he also, on that Day, returned homeward, but does not remember any particular Business required it. Says he was acquainted with Robert Charles, and has seen him write, and believes his Name subscribed to the original Paper was his Hand.

Note.

How very natural it would have been, for either of these two Gentlemen, to have said one Word that he believed, or he judged, or thought, that was a Right Opinion on the Question: but they do not say a Syllable of that sort, and indeed, it was a most shameful Answer they gave.

Benjamin Tasker, of Maryland, the Defendant's Witness, [Lib. G. fol. 290. Int. 8. fol. 291.]

Proves the said Exhibit is a true Copy, and that he has examined and compared it with the Original, and he believes the Name of Robert Charles, subscribed to the Original of it, was of Charles's Hand writing, who was one of our Commissioners.

John Ross, of Maryland, the Defendant's Witness only, [Lib. G. fol. 303. Int. 8. fol. 304.]

Proves also that the said Exhibit is a true Copy, which he has examined and compared with the Original.

So that here is—great Caution to prove only a Copy of this curious Paper, which the Governor of Maryland keeps the Original of, and does not produce, and which the two Persons who framed that Original, are ashamed to say that they themselves thought to be a true or right Answer to the Question proposed to them about the Dimensions of the Circle; altho' they swear to their Opinion about the Extent of my Lord Baltimore's Charter.

40.

My Lord cross-examined two of our Witnesses to prove the Extent of Newcastle Town.

Elizabeth Morris, [Lib. H. fol. 26. Int. 6. fol. 28.]

She has been at Newcastle Town, but has taken so little Notice of it, that she can give no Account of its Extent, either as to Length or Breadth.

Thomas James, a Pilot, aged 49, [Lib. H. fol. 12. Int. 6. fol. 16.]

Is acquainted with the Town of Newcastle, situated in one of the three Lower Counties, but knows not in which, being unacquainted with the Divisions thereof. He believes the said Town, in its Buildings, is about half a Mile in Length, and half a Mile in Breadth, but whether the Limits of the Town extended beyond the Buildings of it, or not, does not know.

41.

Samuel Ogle, the Defendant's Governor, [Lib. G. fol. 218. Int. 17. fol. 237.]

That the first Time the Defendant had any Account, of the Proceedings of the Commissioners, for settling the Boundaries of the Provinces of Maryland and Pensilvania, pursuant to the Agreement in Question in this Cause, was, after the Defendant's arrival in Maryland; apprehends that the Defendant was not privy to, or apprized of, what the said Commissioners did, or intended to do, before their first meeting together to execute their Commissions.

Why it was impossible he should; the Commissioners met 6, 7, 30, 31 October, and 1, and 2 November; all that while my Lord was on his Passage; for he swears he arrived in New England in September, and in Maryland on the 14th of the same November.

The same, [Int. 19. fol. 239.]

That to the best of this Deponent's Remembrance, when the Defendant was first informed of the Difference in Opinion between the Commissioners, touching the Circle to be drawn pursuant to the Articles of Agreement in Question in this Cause, the Defendant declared, he had left the Affair to be settled by his Commissioners, as this Deponent believes, that the Declaration aforesaid, was agreeable to the Intention of the Defendant.

The same, [Int. 18. fol. 238.]

That he believes that a Letter was wrote, by the Defendant, during his stay in Maryland, to the Governor of Pensilvania; and that the Purport of the said Letter was to propose a Meeting of the Commissioners, of the two Provinces at Joppa, after the Dispute had arose about the Commissioners of Pensilvania not meeting at Newcastle according to Adjournment; believes the said Letter was received by the said Governor, because the Commissioners of both Provinces met, according to the Proposals in the said Letter at Joppa.

Yes; and pending this Appointment of my Lord's, my Lord

himself sends Parson Hugh Jones, his Mathematician, to post printed Advertisements on the Borders of the three Lower Counties, to draw off our Tenants.

A Worthy Action of the Defendant.

And a Worthy Action to be executed by that Tool of his, the Parson, to remove his Neighbours Landmarks, and draw off his Tenants.

42.

Samuel Hollingsworth, [Lib. H. fol. 29. Int. 1. add. fol. 33.]

Our Witness, cross-examined, says he has once been at a Ferry over Susquehanna River.

John Musgrave, our Witness also, but cross-examined, [Lib. H. fol. 34. Int. 1. add. fol. 38.]

Knows something of Susquehannah River. Is not acquainted with the mouth of it, but believes it falls into Chesapeake Bay. He knows four Ferries upon the said River, some of which he believes lie to the Northwards, and some to the Southwards, of the City of Philadelphia: But is unacquainted with the lower Parts of said River. That the said River is, (where he is acquainted with it) generally about one Mile wide. Has heard that the said River is, sometimes, fordable, both to the Southward and Northward of Philadelphia.

So that, as long as there are Ferries at this River, that our Commissioners were not obliged to swim over it, there could not possibly be any other Inconvenience in going down to Joppa, in order to fix a Center in the middle of Newcastle Town. For this notable Examination is to be used to that purpose.

43.

Samuel Ogle, [Lib. G. fol. 218. Int. 16. fol. 237.] Benjamin Tasker, [Lib. G. fol. 290. Int. 16. fol. 297.] John Ross, [Lib. G. fol. 303. Int. 16. fol. 311.]

All say that the Exhibit markt No. 7. contains a full and true Account of the Proceedings of the Commissioners for carrying the Agreement in Question into Execution, at their several Meetings had for that purpose. Only Mr. Ross speaks to it but from 3d September, 1733, that being the first Meeting he was present at.

A very concise way of giving their Account; whereas we have proved, by Examination in Detail, what passed at every Meeting, upon the 26 several Days; on many whereof, the Commissioners met twice in a Day, Morning and Afternoon; and this is, in Effect, drawing up an Affidavit

(or less) privately, and then swearing, before the Commissioners in the Cause, that that Paper, ready drawn up, is true; but which, surely, is not the Way of being examined in Chancery.

Samuel Ogle, [*Lib. G. fol. 218. Int. 20. fol. 240.*]

That he was one of the Defendant's Commissioners for executing the Articles, and the Exhibit markt No. 8, and endorsed Copies of several Papers exchanged and delivered by and between the Commissioners, which he has carefully compared and examined with the originals of which they purport to be Copies, and they are true Copies of the Originals, and believes that the Originals, of which the Papers aforesaid are Copies, were exchanged and delivered by and between the Commissioners on behalf of the Plaintiffs and Defendant; and believes all the Persons who subscribed their Names to the original Papers were Commissioners on behalf of the Plaintiffs and Defendant; and believes he has seen the Persons whose names are subscribed to the Originals write their Names; and that their Names subscribed to the said Original Papers are of their proper Hands. And believes that the original Paper of which the Part of this Exhibit mark'd No. 1, is a true Copy, is the Hand-writing of Robert Charles, one of the Plaintiffs Commissioners, having often seen him write, and received several Letters of his writing.

Benjamin Tasker, [*Lib. G. fol. 290. Int. 20. add. fol. 298.*]

To the like Effect.

John Ross, [*Lib. G. fol. 303. Int. 20. add. fol. 312.*]

To the like effect, only he speaks to those only which were dated upon, or after the 3d of September, 1733.

To be sure, where the Defendant's Commissioners delivered Papers to our Commissioners, they could only prove Copies of those Papers, so delivered from themselves; but, as I understand these Depositions, they have not done that; for, they have kept in Maryland the original Papers which their Commissioners received from our Commissioners, and they have also kept the original Copies of the Papers which their Commissioners delivered to ours, and have sent us only examined Copies of both, over here, as Exhibits.

44.

The Defendant's Proof of his Application for a Grant in August, 1734.

John Sharpe, [*Lib. F. Fol. 14. Int. 14. Fol. 52.*]

Knows, and was privy to, the Application, made by the De-

defendant, to his Majesty, for a Confirmatory Grant of the 3 Lower Counties, after the Execution of the Agreement; and the said Application was made by Petition, by the said Defendant, to his Majesty in Council, which Petition was presented, in the beginning of the Month of August 1734, to his best Remembrance and Belief as to the Time; and saith that the Defendant, and this Deponent apprehended and believed, that two of the said Plaintiffs, as well as Mr. Paris their Agent and Solicitor, were then in England; but saith that the said Defendant, and this Deponent, were, soon after, informed that the Plaintiff John Penn had, some short Time before, left England; but such his Departure was in a private manner, and not publickly known; but that one of the said Plaintiffs, and the said Mr. Paris, Agent or Solicitor for all the Plaintiffs, were then, as this Deponent believes, in England; and saith that the Defendant did, (as the Deponent verily believes) apprise Mr. Paris, of his the Lord Baltimore's Intention of making the said Application, before he made the same; and saith that the said Petition being, by order of Council, dated on or about 8th August, 1734, referred to the Consideration of the Lords Commissioners for Trade and Plantations, to consider the same, and to report their Opinion thereon, the said Petition and Order were, on or about the 28th of the same August, to the best of his Remembrance and Belief, as to the Time, laid before the said Lords Commissioners; and, the very next Day, (as this Deponent verily believes) Notice was given, pursuant to their Lordships Directions, to the said Mr. Paris, of the said Petition being referred to them. And saith that (as he believes) the said Mr. Paris had due Notice of all the Proceedings, which were afterwards had, on the said Petition, and appeared and attended their Lordships in opposing the said Petition, both by himself, and Council, for and on behalf of the said Plaintiffs; and that one of the Plaintiffs, in Person, also, attended their Lordships thereon; and Mr. Paris presented a very long Petition to his Majesty in Council, on the behalf of the Plaintiffs, praying, amongst other things, that the said Petition of the said Lord Baltimore, might be dismissed.

NOTE—It is my Lord Baltimore's Misfortune to have his Answer falsified by every one of his Witnesses: for he swears (for once) the Truth, at fol. 392. That Paris delayed to lay the Plaintiff's Title before the Lords of Trade, from time to time, and at last declined it, or appearing in Support of their pretended Right, and only stood by to take notice of what past, and what was offered by the Defendant and his Council. And to the like Effect is said by the Lords of Trade's Report also.

45.

The Defendant's Proof of Exhibits in England.

Hugh Hamersley, Mr. Sharpe's Clerk, [Lib. F. fol. 57. Int. 12. and last fol. 59.]

Says that the produced Petitions, No 1. 2. 3. 4. 5. 6. 7. 8. 9. are true Copies of the original Petitions, remaining in the Council-Office, by him examined with the original Petitions there remaining. And that the Papers annex to the said Petitions, No 1. and No 3. are true Copies of the Papers annex to such original Petitions, having carefully examined them. And that the Paper-Writings, No. 10. 11. 12. 13. 14. 15. 16. 17. are true Copies of original Orders, recorded in the Register-Books of the Council-Office, by him carefully examined. And that the Paper No. 18, is a true Copy of the original Report of the Lords of Trade, remaining in the Council-Office, with which he examined the same. And that the Paper No 19, is a true Copy of the original Order, whereof it purports to be a Copy, having carefully examined it with such original Order at the Plantation-Office, as the same remains amongst the old Records there; And that the Papers No 20 and No 21, are true Copies of the original Papers, whereof they purport to be Copies, having examined the same with the original Papers at the Plantation Office, as the same remain lodged or deposited there. And that the Paper-Writing, No 22, is a true Copy of the original Bill signed by Sir R. Sawyer, having compared the same therewith, as it remains deposited at the Signet Office, Whitehall. And that the Words following (Expedited the 16th Day of April, 1683, per Morice) wrote at the foot of such Copy, is a true Copy of an Endorsement on such Original. And that the Paper-Writing, No 23, is a true Copy of an Entry, made and entred in a Book or Register belonging to the Privy Seal Office at Whitehall. And knows of nothing else that will make for the Defendant's Advantage, except that he has made careful and diligent Search and Enquiry at the Rolls-Chapple, and of Mr. Henry Rooke the Clerk of the said Chapple, who has the Custody and Care of the Rolls and Records there kept, in order to find out and discover whether any Grant or Letters Patent ever past the Great Seal, in pursuance of the said Bill or Draft of a Grant No 22, but has not been able to find any such Grant amongst the Rolls and Records of the said Chapple, or any Enrollment thereof, and has been informed by Mr. Rooke, and believes to be true, that Mr. Rooke has made diligent Search, but has not been able to find the same, or any Entry or Memorandum thereof, in any of the Books or Registers belonging to the said Chapple, and that he therefore believes no

such Grant ever did actually pass the Great Seal, for that, if the same had past the Great Seal, it ought to have been regularly enrolled in the said Chapple of the Rolls.

NOTE—As to his No 19, the Plantation-Office is not the Place, but the Council-Office is, for original Orders of Council. I suppose that is the Copy of the Order about Clayborne and the Isle of Kent; If so, am surprised that Mr. Sharpe, who knows the State of that Order full as well as I do, would let his Clerk call that unauthentick Paper at the Board of Trade the Original Order.

46.

We come now to the Gist of the Cause. The Defendant, fol. 268, 269, says he believes the Plaintiffs, knowingly and designedly, took Advantage of his Ignorance and Want of Knowledge of the several Places mentioned in the Map or Plan, and of the proper Situation and Distances thereof, for that, in the said Map, which was so made use of as a Guide in making the Agreement, there is a Place described and said to be Cape Hinlopen, in which Place there is no such Cape; And that the Place, described by the said Map to be Cape Cornelius, is the true Cape Hinlopen, originally so called by the Dutch, and so described in their Maps; Which was a great Imposition on the Defendant, and misled him, in regard the East and West Line, that was agreed to be drawn across the Peninsula, was to begin, on the East Part of the Place in the said Map called Cape Hinlopen; but, ought to have been from that Place only which in the said Map is called Cape Cornelius.

This being the Deceit put upon him, by his own Map I beg you would turn to his Map, and then take his own following Evidence, which do afford (I think) the very strongest and clearest Evidence against him that the Plaintiffs themselves could possibly wish or desire.

Margaret Simpson, aged 69, the Defendant's own Witness only,
[Lib. G. fol. 194. Int. 12. addit. fol. 198.]

Says, that she, about 46 Years ago, when she lived in Maryland, heard of a Place called Cape Henlopen or Inlopen, at or near Phenix's Island; And hath, since her residing at Lewis-Town, heard of a Place called Cape Cornelius about 3 or 4 Miles from Lewis-Town aforesaid, and of a Place called Cape May, opposite to said Cape Cornelius; and that, near Phenix-Island, there was, as she heard, a Brass or Copper Plate, or Brass or Copper Nails, on a Tree; and that for forty Years past, she has often heard the People of Maryland aforesaid, and of Sussex

County aforesaid, dispute, and offer to lay Wagers, some that Cape Henlopen was near Phenix's Island aforesaid, and others, that the Cape near Lewis-Town was called Cape Henlopen.

NOTE—To obviate that very Difficulty or Doubt, on account of the Names being transferred, the Articles express it, by a double Description, Cape Henlopen South of Cape Cornelius.

John Fleaharty, of Maryland, Planter, the Defendant's own Witness only, aged 102, [Lib. G. fol. 145. Int. 14. fol. 145.]

He is acquainted with some of the Places named in the printed Plan; And that he never heard of any Place or Cape called Cape Cornelius, till within these 6 Months. But that the Place, markt in the said Map for Cape Cornelius, is the Place where the Whorekill Town, settled by the Dutch, was built, opposite to Cape May, and is the Place this Deponent heard the English call Cape Inlopen, [Hitherto he seems not much for us, but he amply repays us] And that, to the Southward of Indian River and St. Martin's Creek, which St. Martin's Creek is in Somerset County in Maryland, there is also a Place called Cape Henlopen. That he is not certain of the Distance between the Places markt Cape Cornelius and Cape Hinlopen, but supposes, upon a direct Line, it is about 12 Miles. This Deponent does not know how it came to be called Cape Hinlopen, but has heard that the Dutch settled the Whorekills, before Maryland or Virginia was settled by the English.

This very antient Witness sets out finely for the Defendant indeed: He says the English call the upper Cape Inlopen but that there is a Place, where? South of Indian River and St. Martin called Cape Henlopen, and that the Dutch settled first, before the English.

Charles Hilliard, aged 63, the Defendant's own Witness only, [Lib. G. fol. 158. Int. 14. fol 166.]

Knows several Places mentioned in the Plan which lie between the City of Philadelphia and Lewes Town, which is near the Capes of Delaware, and that he has been at Lewes-Town, and has seen a Point of Land which is called the Cape, which lies, on the other side of a Creek, but, being not skilled in Geography, can't say whether the Places laid down in the said Exhibit are rightly delineated, or not.

The same, to the 12th additional Interrogatory, fol. 168.

Has heard of a Place called Cape Hinlopen, which lies to the Southward of Indian River, near an Island, the Name of which he does not remember; The said Cape was first so called by the Dutch; And that he has heard of the said Cape Henlopen from his Father, who was a Sea-faring Man, and lived at St. Martin's Creek or River, near Indian River aforesaid. This is better still.

Martha Johnson, the Defendant's own Witness only, uncertain of her own Age, but believes 72, [Lib. G. fol. 210. Int. 12. add. fol. 212.]

Lives near five Miles from Lewes Town, the way that is usually rode. She has heard, that a Place, very near to where she lives, was, by the Dutch, called Cape Inlope. And further says, that she thinks she has heard that a Place, at Phenix's Island, was called Cape Henlopen but that the whole appears to her like a Dream.

These are the Defendant's Witnesses, and his own Examinations.

John Miller, of Somerset County in Maryland, Planter, aged 44, the Defendant's own Witness only, [Lib. G. fol. 271. Int. 14. fol. 272.]

Has lookt upon the Plan. Is acquainted with Delaware Bay, and all the Sea-Coast, from Delaware Bay to the Capes of Virginia having been several Voyages into the said Bay of Delaware and along the Sea-Coast. He has taken an Observation at the Place markt Cape Cornelius, and found it to be in 39 Degrees and 5 Minutes North Latitude. That in all the Sea-Charts and Waggoners which he has seen, the said Cape was called by the name of Cape Henlopen. except some few People in Sussex County, who called it by the name of Cape Cornelius. Says, that, at the Place, markt in the said Exhibit Cape Hinlopen, there is no appearance of a Cape, either near or at a distance, the Sea-shore there is near strait, and very low. That the Place, called Cape Henlopen in the said Exhibit, he apprehends, is intended for the Place called by the Inhabitants there Phenix's Island: tho' he thinks, it ought to have been laid down more to the Southward than it is, near the Midway between the Place markt Cape Cornelius, and the Southern Bounds of Maryland. Says, he believes it is from Phenix's Island to Cape Hinlopen, markt Cape Cornelius in the Exhibit, along the Sea-shore, about 23 or 24 Miles. Says, that the Word Henlopen is a Dutch Word, which Language he does not understand. Says, there are several Rivers and Creeks, along the Sea Coast, and in Delaware Bay, which are not laid down in the said Plan [whose Fault was that? It is not our Plan] particularly Seny Puxen, Indian River, and the Whorekill Creek. That, near to the Place markt Cape Cornelius, in the said Plan, there should have been a Bend, and that, afterwards, it should have been laid down straiter than it is in the said Plan. That he has never read the Articles of Agreement between the Parties but if the Southern Bounds of the three lower Counties were to be run, from Phenix's Island, to the Middle of the Peninsula,

described in the said Exhibit, it would extend upon the Possessions of the Defendant, upwards of eight Miles to the Southward, and a considerable Space to the Westwards.

Supposing this was so, yet if the South Bounds went up so high as to the upper Cape, as my Lord contends, then this Witness allows it would extend 16 Miles upon the Possession of the Plaintiffs, and others say 18 Miles; and we shall clearly account for those 8 Miles this Witness talks of.

The same, to the 15th add. Inter. fol. 279.

Has been acquainted with the Sea-Coast, Delaware Bay, and the Country thereabouts, described in the Plan, near 30 Years. Believes that, upon the Tract contained between the Place called Cape Cornelius, and Cape Henlopen, in the said Plan (if Cape Henlopen in the said Plan is intended to be at Phenix's Island) extending the Lines, from both Places West to the Middle of the Peninsula, does contain about 500 Families. [Note, He says this of the whole 23 or 24 Miles.] That the Inhabitants, to the Southward of Indian River aforesaid, have lived under the Government of Maryland; And the Inhabitants to the Northward of Indian River aforesaid, have lived under the Government of Pensilvania. Hath seen several Patents for Lands, from the Lord Baltimore, to the Northward of Phenix's Island, dated in 1677, and the rest bearing Date before the Year 1684. And has also seen two Patents from the Proprietors of Pensilvania, dated 1684, for Land upon Indian River, and on the South Side thereof. That ever since he can remember, [born in 1696] the Inhabitants, on the South Side of Indian River have always paid their Quit-Rents to Lord Baltimore, and his Ancestors, except during the time there was an Equivalent given by the Country to the Defendant for the same. And that he has never heard of any Quit-Rents being paid for the said Land, or any of the said three lower Counties, by the Inhabitants to the Plaintiffs, or their Ancestors.

This is a planter, who has made several Voyages into Delaware Bay; He says, he lives in Somerset County, which is just below Sussex County: and Indian River, indeed, is not easily crost, without a Voyage. But he swears there is no appearance of a Cape at Phenix's Island, either near, or at a Distance, the Sea Shore is very low. Now let us see how their own next Witness contradicts him, as to that last Point, and fortifies all our Witnesses.

Boudoin Robins, of Maryland, Planter, the Defendant's own Witness, only aged but 34. [Lib. G. fol. 282. Int. 14. fol. 282.]

Has lookt upon the Plan, and is acquainted with the Sea-

Coast from the Capes of Delaware to the Mouth of Chesopeak Bay, and from thence, with the said Bay of Chesopeak, as high as Annapolis. Says, that Cape Hinlopen should have been placed in the Plan where the Place markt Cape Cornelius is, as he apprehends; for that he has been a Coaster, eight or ten Years, and has ever understood that Place to have been Cape Henlopen, and has always heard it called so, by those who spoke of it to him. And that the Shore, from thence (excepting a little Bend near the said Cape, about five or six Miles to the Southward of it) is generally strait, and beareth South and by West. Says, he observes that Seny Puxen and Indian Rivers are not laid down in the said Plan, and also Choptank River that runs into Chesopeak Bay. That he can't tell by what Name the Place, markt Cape Hinlopen in the Plan, is called by the Inhabitants, because he does not know its Distance from the Mouth of Delaware Bay. That, in sailing along the said Sea-Coast, towards Delaware Bay, the Land at Phenix's Island, is somewhat higher than the rest of the Land about; But that no cape appears, till you come to Cape Hinlopen lying on the South side of Delaware Bay, and markt in the Plan Cape Cornelius. [Note, There being no real and true Cape or Head-Land, is the very Reason for transferring the old Name to the Place where there is unquestionably a Cape. And this Witness tells you he is a Coaster, and a young one too, of 8 or 10 Years.] He goes on, and says, he has heard it was called Cape Hinlopen by the Dutch, and that the Meaning thereof is inlap. That he thinks the Cape, upon the East Side of the Mouth of Chesopeak, is not truly laid down; and several Islands, Creeks, and Inlets, are omitted in the said Plan, that lie in and run into Chesopeak Bay.

The same, to the 15th add. Int. fol. 288.

That, as there is neither Scale or River mentioned between the said Places markt Cape Hinlopen and Cape Cornelius in the Plan, he cannot, thereby, find out whereabouts the Place, therein called Cape Hinlopen, is intended to be fixt; nor can say how many Families there are inhabiting betwixt that Place and the Place there markt Cape Cornelius; but always understood that the People as far North as Indian River, held their Lands under the Proprietary of Maryland.

Colonel Thomas Colvil, of Maryland, aged 50, the Defendant's own Witness only, [Lib. G. fol. 120. Int. 14. fol. 121.]

Says he is not well acquainted with the Bay of Delaware described in the produced Map, but has been once up and down the said Bay. That he is no otherwise acquainted with Cape Hinlopen, than as is described in the Sea-Charts, or West-India

Waggoners. That he has never heard of any Cape called Cornelius, till within these six or seven Years. He knows not from whence Cape Hinlopen took its Name. That, when they sailed in, by the Cape Hinlopen described in the Sea-Charts or Waggoners aforesaid, they apprehended the Cape lay very near Lewis Town.

This is nothing to the purpose; the Defendant might have had 10,000 Witnesses, who had only seen the new modern Maps, that might have said just the same as Colonel Colvill does.

And these Witeesses tell us, to whom the Inhabitants South of Indian River pay their Quit-Rents, but how many are the Inhabitants? Have they proved seven, five, or three, such Inhabitants? I see not the least Proof made by the Defendant, of any one Inhabitant or Settlement, there, made by Maryland; and indeed, it's a low, sandy, unhealthy and unpleasant Place, and will be the last that is settled, whoever it belongs to.

But, what is all this, and more of the same kind, to the purpose? My Lord says, that our Cape Cornelius was the Place originally called by the Dutch, and so described in their Maps, Cape Hinlopen, why then, *sit Liber Judex*: Has my Lord proved any one Map whatever? No. Why has he not? Because they most absolutely falsify his Pretence and lay down both Capes exactly according to his own Map.

Thomas Hynson Wright, of Maryland, Esq., the Defendant's own Witness only, and a Surveyor, aged 52, [Lib. G. fol. 251. Int. 114. fol. 259.]

That he hath lookt upon the Plan, and is acquainted with most of the Land between the main Ocean Delaware Bay, and Chesopeak Bay, as far Northward as Newcastle; and that, after the Agreement made between the Plaintiffs and the Defendant, he this Deponent was employed, by the Defendant's Commissioners, to go down and take a Reveiw of the Cape of Delaware, and the Sea-Side. And that, when he came to Lewes Town, he inquired of several of the principal Inhabitants there, for Cape Henlopen, particularly of William Till, Rives Holt, and one Colleak, and was shewed, by them, a Point for Cape Hinlopen, at the South Side of the Mouth of Delaware, which seems to be represented in the said Plan by the Cape marked Cape Cornelius; and that the said Cape bore, near East, about 4 or 5 Miles Distance, (as he was informed) from Lewis Town aforesaid; and that, he, afterwards, went, from Lewis Town aforesaid, to the said Cape, and coursed the Sea-side, along with a Compass, to the Mouth

of Indian River, which the Inhabitants there acquainted this Deponent they computed to be about 12 or 14 Miles from the said Cape, and that the Course thereof was very near South; and that, afterwards, he, this Deponent, went to a Place, called Phenix's Island, which the Commissioners aforesaid informed him that the Plaintiffs Commissioners deemed to be Cape Hinlopen, as described in the Exhibit aforesaid. [Why did he not ask there for Cape Hinlopen?] From which last mentioned Place, he run the Course of the Sea Shore, and measured the Distance of the Mouth of Indian River aforesaid; and that Indian River bore about North 9 or 10 Degrees East, and distant about 8 or 9 Miles from Phenix's Island: Saith that, as he went along the Sea Shore aforesaid, he inquired for the oldest Inhabitants there, and by them was informed, that they never knew or heard of any Place called Cape Hinlopen, but that Cape near Lewis Town aforesaid, until the Agreement aforesaid; That the Course of the Sea-shore aforesaid appears to this Deponent to be untruly laid down in the said Exhibit; and that he does not know by what Name the Place marked Cape Hinlopen in the said Exhibit, is called by the Inhabitants there; Hath understood formerly, that the Word Hinlope was Dutch, and that it signified leaping in, and therefore applied to the Entrance of Delaware Bay. Saith, that the said Plan contained in the said Exhibit is incorrectly made. That there are divers Rivers, viz. Nauticoake, Choptank, Chester, and Sassafaras, not laid down in the said Map; and that he believes, that, if the said Rivers had been laid down in the said Map, The Tangent Line therein marked, would have intersected the Heads thereof, and would have cut off navigable Waters from Nauticoak and Choptank, if not from the other Rivers. [This is provided for, by my Lord's new Clause, if it does.] And the Reason of such his Belief is, because he traversed the Courses of the Roads, from Lewis Town to Phenixes Island, and from thence, into Queen Anne's County in Maryland, and from thence to Newcastle aforesaid, in order to plat the same, and discover where the Tangent Line would run. Saith, that if the Articles of Agreement aforesaid, were carried into Execution, and the Place called Phenixes Island should be deemed Cape Hinlopen that the Defendant would lose near 300,000 Acres of Land, which he never understood were claimed as Part of the three lower Counties aforesaid.

This Witness does not tell us one single Word, whether there is, or is not, the Appearance of a Cape at Phenix's Island, which would have been very material and natural for him; and, as he was employed, as a Surveyor, in the Service of the Deendant, by the Defendant's own Com-

missioners, purely to enquire for the Cape, and to view the Cape, he certainly must have known or learned something about it, one way or the other: but he is not asked one Syllable about it.

This man, sent down purposely, on this Errand, enquired at Lewes Town, in the Neighbourhood of the New Cape Hinlopen, of several of the principal Inhabitants, (and he names three only and no more) for Cape Hinlopen, and they shew'd him what is called in the Plan Cape Cornelius, near Lewis Town, and so will 1000 other Persons, now at this Time, do.

He tells what Course the Sea Coast bears, and the Distance of several Places,

And he inquired of the oldest Inhabitants, and was informed by them, (but does not name any one single Person of them) that they never heard of any Cape Hinlopen, but that near Lewes Town.

What Pity it is, this Gentleman, in his Search and Enquiry, had not found out any one of the many Maryland Witnesses, and Sussex County Witnesses both, which the Defendant and the Plaintiffs found out, and have examined all of whom knew, and could have told him very well, of another Cape Hinlopen, at Phenix's Island, and which they have all sworn to in this Cause.

You'll please to observe how cautious this Man is, he does not pretend that my Lord is possessed of, or has a single Tenant upon the 300,000 Acres which he speaks of.

Governor Samuel Ogle, of Maryland, aged 40. [Lib. G. fol. 218. Int. 14. fol. 226.]

That he is acquainted with the upper Part of Chesopeak Bay, and the Rivers therein, and the Country about it, described in the Exhibit or Plan; and that he lookt upon the said Map or Plan to be very imperfect and false; There being some Rivers wanting, and others wrong designed and described. That, from the best Information he has been able to get, he is persuaded Cape Henlopen is wrong laid down in the said Exhibit; and that, where Cape Hinlopen is laid down, in the said Exhibit, there is not the least Appearance of a Cape. And that he apprehends, from the best Information he has been able to get, Cape Henlopen should be laid down, where Cape Cornelius is laid down, in the said Exhibit; and that, for about 30 Miles to the Southward of the Place which this Deponent apprehends to be the true Cape Hinlopen, marked in the Exhibit Cape Cornelius, there is a flat Shoar, and no Appearance of any other Cape. Saith, that he really believes the Exhibit aforesaid was con-

trived, on purpose to deceive the Defendant, and that the Plaintiffs were privy to the Falsities and Misrepresentations (before the Execution of the Articles aforesaid) therein made; and that it was artfully conveyed into the Defendant's Hands, by the Plaintiffs or some of their Friends. The Reasons why the Deponent believes the said Map was not sent from Maryland to the Defendant, are, that he hath heard the late Governor and Mr. Philemon Lloyd, Secretary of Maryland, who had the principal Management of the Defendant's Affairs concerning the Boundaries of that Province, often declare that they had no hand in the making, or sending it, nor could he ever learn that they, or any other Gentleman in Maryland, ever heard of Cape Henlopens being where it is laid down in the Exhibit, before the Map, of which the Exhibit is a Copy, came into Maryland with the Articles of Agreement; and that the Deponent can't conceive how any Gentleman in Maryland, could ever think of placing Cape Hinlopen any where but at the Whorekills, since in the Deed of Feoffment from the Duke of York to Mr. Penn. it is called Cape Henlopen, alias the Whorekills; and the Deponent hath never heard of any Dispute made about the Scituation of the Whorekills.

This Gentleman who, upon Oath, does not believe only, but absolutely knows, the Heart of Man, (even at first Sight) and how much they know, and how little they know, happens to be wonderfully out in what he is perswaden of, and in what he apprehends, (for those are the governing Words of the former Part of his Deposition as to its being a flat Shoar, and there not being the least Appearance of a Cape. For his Perswasions and Apprehensions have the Misfortune to be flatly contradicted by many of his own Fellow Witnesses, (but not Governors) and by many of ours likewise, all of which swear the direct contrary.

2dly, As to his real Belief, 1st, That the Plan was contrived to deceive the Defendant; 2dly, That the Plaintiffs were privy to the Falsities in it before the execution of the Articles; and, 3. That it was artfully conveyed into the Defendant's Hands, by the Plaintiffs, or their Friends, any one of these 3 Things proved, had been exceedingly material, but no Step to prove any one of them, nor, any one Reason given, why he believes any one of those Things.

My Lord himself, and his Sollicitor, both admit that the plan was sent to my Lord by his own Agents, whoever they had it from; but this Man goes higher, and believes that the Plaintiffs, or their Friends, conveyed it artfully into the Defendant's Hands; so that he out-does, and

contradicts, his Master, and all, without the least Reason given why he believes this.

Well, but he swears he has some Reasons to believe another distinct Matter; namely, that the Map was not sent from Maryland; and we will examine those Reasons, and see whether they are Reasons to believe that other Matter from. Why first, he has asked two single Persons, the late Governor and the Secretary, and they two told him they had no Hand in making or sending it. But has he examined them as Witnesses? No. Does he say either of them is dead? No. Suppose they told him what was false! Or, suppose they told him true, Has he asked my Lord's Surveyors General, whose Business it was to make Maps and Plans? No. Can't my Lord tell who it was that he had that Plan of his own Province, from? Does my Lord, or any one else, so much as pretend to name, or say, who the Person was, that delivered the Plan to him? No. Has he examined to prove that that Map was ever seen or heard of, in Pensilvania? No. Had not they an Interrogatory framed, on purpose to examine into that Matter? Yes, they had, their 5th cross Int. H. Fol. 176. but they could find nobody proper to be examined upon it.

But 2dly, This Witness has another Reason to believe the Map could not be sent from Maryland; for he could never learn that the late Governor, and the Secretary, or any other Gentleman in Maryland ever heard of Cape Hinlopen's being where it is laid down in the Map. What Pity it is a Man, of so great Knowledge, should be so unwilling to learn, what so many of his own, and of our Witnesses (many of Maryland) could have told him, and have sworn, that not only the particular Place was called Cape Henlopen by the Dutch, but that the whole Country thereabouts was called, after its Name, Hinlopen?

He can't conceive that any Gentleman in Maryland could ever think of placing Cape Hinlopen any where but at the Whorekills; since, in the Duke's Feoffment, it is called Cape Hinlopen alias the Whorekills; and he never heard of any Dispute about the Scituation of the Whorekills; but are not we, at this Instant, and himself in this very Argument, considering the Extent of that large District, called first Whorekills, and afterwards Sussex County? And, however it may be expressed in the Duke's Feoffment, yet, surely, to Persons, who have seen the Dutch Maps of 1663, and the English Map in 1671, both which laid down Cape Henlopen and Cape Cornelius, and laid down Cape Hinlopen at the Place really called by the

Dutch Cape Hinlopen, and who know (as the Witnesses do) that that Place was called Cape Henlopen by the Dutch, it would be no sort of Impropriety for a Marylander to think that Cape Hinlopen lay, at a Place where he knew it did lay; and any Inaccuracy, if there was any, in the Duke's Feoffment in 1682 (and which is helped by the present Articles) would not determine a Man to make a Map of a Country knowingly wrong, because that the Duke of York had, once, inaccurately expressed a Part of that Country, in some Deed of his, dated in 1682.

But, if he will have the Duke of York to explain where Cape Henlopen lay, that was so called by the Dutch, they may find it, in very clear explicit Terms. In the Patent which the Duke was obtaining, the Beginning of the very next Year 1683: which describes it exactly according to our Evidence; and that Patent the Defendant himself has proved a Copy of, from the Signet Office, in this Cause.

The Defendant has cross examined eight of our Witnesses, upon some printed Plan or Map marked A, which I suppose was a Copy of his own Plan annexed to the Articles.

John Teague, Lib. II. fol. 43. Int. 3. fol. 45. Elizabeth Morris, Lib. II. fol. 26. Int. 3. fol. 28. John Musgrave, Lib. II. fol. 34. Int. 3. fol. 36. William Peterson, Lib. II. Fol. 7. Int. 3. fol. 10.]

Who all say they have looked upon that Exhibit, and don't understand it.

Samuel Hollingsworth, aged 67, [Lib. H. fol. 29. Int. 3. fol. 31.]

Says he is unacquainted with the lower Part of Delaware, and tho' he has heard of Cape Hinlopen, Cape Cornelius, and the Whorekills, can give no particular Account of them. He does not remember to have heard of Phenix's Island, [Note, he lives in Chester County in the upper Part of Pensilvania] That he knows Christiana Creek, and takes that Creek in the Map, next above Newcastle, to be designed for it.

John Rambo, of New Jersey, Farmer, aged 59, [Lib. H. fol. 19. Int. 3. fol. 21.]

He has looked upon the Plan, and he has never heard of any Cape called Cape Cornelius; but that the Place, therein so marked in the Place which he has always understood to have been called Cape Hinlopen since he has been acquainted with those Parts. That he is acquainted with the Whorekill Creek, which runs into the Land, a little within the Cape marked in the Exhibit Cornelius; but knows nothing of Phenix's Island.

That he knows Christiana Creek, which lies, as he believes, 3 or 4 Miles above Newcastle.

NOTE—This Witness, a Country Farmer, has just told us, in the next preceeding Interrogatory, that he was born and lived his first 20 Years up at Philadelphia, and the Residue of his Time in another distinct and more remote Province, New Jersey, and was never but one Winter a Whaling at the Places enquired after, and that 50 Years ago; and now, they are enquiring into his Knowledge, and his Understanding, these Places.

Samuel Preston, aged 75, [Lib. H. fol. 104. Int. 3. fol. 106.]

Has looked upon the said Plan, and is acquainted with the Places marked therein Cape Cornelius; and has heard of the Place therein marked Cape Hinlopen. Says that the Place therein marked Cape Cornelius has generally, since his knowledge of it been called Inlopen, and is distant from the Place in the said Plan called Cape Henlopen about 25 Miles as he believes; Further says he has seen some Maps wherein the Place called Cornelius in the said Plan, was called by the same Name Cornelius. He knows the Place formerly called the Whorekill Town, and Christiana Creek, and hath heard of Phenix's Island. That the Whorekill Town lies near to the Place in the Plan marked Cape Cornelius Christiana Creek about 5 Miles above the Town of Newcastle. And believes that Phenix Island is about the Place marked Cape Hinlopen. Says that a Creek runs up by the Whorekill Town.

Thomas James, Pilot, aged 49, [Lib. H. fol. 12. Int. 3. fol. 13.]

He has looked upon the Plan, and is acquainted, by sailing into Delaware Bay, with the Place therein marked Cape Cornelius, which is now called Cape Hinlopen. That there is another Place, that has the Appearance of a Cape, to the Southward of the said Cape, which has been sometimes called Cape James, [please to mark it well, for our written Evidence proves that Mr. Penn, so named it in 1682] sometimes Cape Hinlopen, and sometimes the false Cape; but whether this last be correctly laid down, or not, in the Exhibit, he cannot say, there being neither Course nor Distance expressed therein. That he is not acquainted with the Place called Phenix's Island, but has seen the same from the Sea. That he is acquainted with the Place formerly called the Whorekills. That it is scituate upon a Creek, formerly called by the Dutch, the Whorekill Creek, about four or five Miles within the Cape marked in the Exhibit Cape Cornelius. That he is likewise acquainted with Christine Creek, which is a Creek scituate about 5 Miles above Newcastle in the Exhibit mentioned.

The Defendant, surely, was afraid we should not sufficiently falsify his Answer, and prove our true Cape Hinlopen, and so he takes Care to supply us with more and further Proof of it.

And thus ends all the Proofs: wherein it appears most marvellous that the Defendant, who builds his whole Pretence of Imposition in that his own Map did not lay down Cape Hinlopen where the Dutch Maps did, has never attempted to produce one single Map, to support that Assertion.

Another material Omission on the Defendant's Part is, that he has not proved that original Map which he Produced and marked with his own Hand: and why? It is not that that is wanting, for Paris swears that Mr. Sharpe had it again from Mr. Senex, and Mr. Sharpe now swears that the printed Map is an exact Copy of it. But it is for this Reason, they know (and so Paris swears) that that original Map had many Marks, and Lines, and Notes about it, relating to the Circle, and therefore the Defendant conceals that original Map of his, because it would convict him.



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